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DIVORCE.

In the case of *Fisk & Stevens*, contained in the present issue, the Court of Queen's Bench was asked to decide one of the most important questions ever submitted to our Courts. Mr. and Mrs. Fisk (defendant and plaintiff) were married in New York, and their matrimonial domicile was in that State. Subsequently Mr. Fisk removed to Montreal, Canada, and established his domicile there. The wife, later on, was desirous of obtaining a divorce, and applied to the Supreme Court of New York, which, on proof of the husband's adultery, granted a decree dissolving the marriage. The husband appeared in the divorce suit, but did not contest it. After obtaining the divorce the woman, without any authorization whatever, sued her late husband at Montreal for an account of the fortune which she had placed in his hands at the time of the marriage. If the New York divorce was valid in the Province of Quebec this action would be maintainable in our Courts. If the divorce was not valid, then the wife before bringing suit, should be authorized by her husband or (on his refusal) by a judge. The question in the case, therefore, was whether the divorce obtained abroad could be recognized by our Courts. Mr. Justice Torrance in the Superior Court, held that the divorce was valid here, and this opinion is shared by Mr. Justice Monk and Mr. Justice Cross of the Court of Appeal. The majority of the latter Court (Dorion C. J., Ramsay and Baby, JJ) hold that the divorce cannot be recognized here; that the marriage tie in this Province is indissoluble, save by a special Act of Parliament in each case, and that the domicile of the husband being here, the wife had no right to go back to the matrimonial domicile to institute an action of divorce. As the effect of this decision upon the law of the case was to pronounce the parties still husband and wife, it followed that the suit by the wife in our Courts without authorization, was illegal, and the action was dismissed, the recourse of the wife to bring an action of account, on authorization properly granted, being reserved. We give the opinion of Mr. Justice Ramsay in favor of this view, and the dissentient opinion of Mr. Justice Cross. The case is to be carried to the Supreme Court of Canada.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, September 19, 1883.

DORION, C. J., MONK, RAMSAY, CROSS & BABY, JJ.

FISK (deft. below), Appellant, and STEVENS (plff. below), Respondent.

Divorce obtained by wife in foreign country while husband domiciled in Quebec—Right of wife to an account—Absence of authorization.

The parties were married in the State of New York, without antenuptial contract, and their matrimonial domicile was in that State, but the husband afterwards changed his domicile to the Province of Quebec. After this change of domicile the wife obtained a divorce in the Supreme Court of New York State, the husband appearing in the suit, and not contesting. Held (reversing the judgment of Torrance, J.,) that divorce not being recognized by the law of the Province of Quebec, which was the domicile of husband and wife, the decree obtained by the latter in New York had no binding effect in Quebec, and notwithstanding such decree the parties were still husband and wife; and therefore, the wife could not bring an action against her husband for an account without being authorized.

The appeal was from the judgment of the Superior Court, Torrance, J., reported in 5 Legal News, p. 79.

CROSS, J. (*diss.*) On the 29th August, 1881, Virginia Gertrude Stevens instituted an action in the Superior Court at Montreal against Henry Julius Fisk, in which she alleged that in May 1871, they, the plaintiff and defendant, were married in New York, their actual and intended domicil. They made no ante-nuptial contract. Their proprietary rights were consequently governed by the laws of the State of New York, which permitted her to retain the absolute and exclusive ownership, control and disposal of all property, effects and rights belonging to her previous to and at the time of her marriage; that she was at the time owner of

valuable effects and securities amounting to $220,775.74, then held for her by trustees who subsequently placed them in her control, who thereupon allowed the defendant her husband to take possession thereof as her agent and trustee. He remained in possession thereof until September 1876, when plaintiff demanded the return thereof with an account of his management, which he failed to give. He only returned a small portion of her said fortune, disposing of the balance and appropriating the same to his own use, and refusing to account for the proceeds thereof. Further, that in December, 1880, the plaintiff was legally divorced from the defendant by a decree of the Supreme Court of the State of New York, equivalent to a divorce *a vinculo matrimonii* pronounced in favor of the plaintiff by the Dominion Parliament, and thereby became entitled to exercise all the rights of a *fille majeure usante de ses droits*. Concluding that the defendant be ordered to account for and pay over to the plaintiff the balance in his hands, and in default to do so that he should be condemned to pay the plaintiff $222,000.

The defendant demurred to the declaration as insufficient in law, on the ground that the domicil of the parties had been for years in the Province of Quebec, and that therefore no legal dissolution of the marriage had been effected.

A hearing was had on this demurrer and it was dismissed.

To the merits the defendant Fisk, now appellant, pleaded that after the parties married in New York they came to Montreal and acquired a new domicil in the Province of Quebec, which new domicil they had at the time of the pretended divorce and for years previously; that therefore the pretended divorce was null and void and the plaintiff was not authorized to institute the action.

Also a plea of general issue, *défense en fait*.

In answer Stevens reiterates the validity and sufficiency of the divorce, averring that her husband was personally served with the complaint in the divorce suit, and appeared by his attorneys without declining the jurisdiction; that if even the divorce were invalid she would still have a right to demand from Fisk an account of his gestion of her fortune as well by the law of New York as by that of Quebec.

The facts seem to be briefly as follows:—In 1871, on the 7th of May, the parties Fisk and Stevens, both being native American citizens, were married in the city of New York in the State of New York, having then their domicile in the city of New York. In October, 1872, Fisk came to reside in Montreal and from that time continued to reside there. With occasional periods of absence, his wife finally left him in 1876, returning to New York, but thereafter passing a part of her time in Paris and part in New York. Mr. Shelburne, an attorney of the State of New York, examined as a witness, swears that after leaving her husband she was a resident of New York, particularly at the time of the institution of the action which she brought against her husband for divorce, and it is presumable that if she could have any other domicile than that of her husband it would be a reversion to her original domicile in the city of New York.

In February, 1880, she commenced a suit in the Supreme Court of New York, against her husband for divorce for cause of adultery; it was served upon Fisk at Montreal, in this Province; he appeared by attorney, and after proof had, a decree of divorce was pronounced there which is proved to be, according to the laws of the State of New York, an absolute dissolution of the marriage, *a vinculo matrimonii*, more especially as regards her, Virginia Gertrude Stevens.

At the time of the marriage she was possessed of a considerable fortune in her own right, which soon after her marriage she entrusted to the care and custody of her husband.

It appears by the proof adduced that by the laws of the State of New York the husband has no control over the separate property of the wife. She continues, notwithstanding the marriage, to exercise her rights over her own property the same as if she were a feme sole.

The present action was brought by her against the said Henry Julius Fisk for an account of her fortune which she had entrusted to him and for which, to a large amount, he had refused to account.

She sues as a feme sole, setting forth the facts of the marriage, the divorce, Fisk's possession of her funds and his refusal to account.

There is no difficulty about the facts. Fisk defends himself upon two grounds.

1st. The invalidity of the divorce.

2nd. The absence of authority on the part of the respondent, Virginia Gertrude Stevens, a married woman, to bring the action.

The second ground, according to our law and practice, would probably be a conclusive answer to the suit if true in fact, that is, if the marriage between her and Fisk still subsisted; C. C. 176: "A wife cannot appear in judicial proceedings without her husband or his authorization."

183. "The want of authorization by the husband constitutes a cause of nullity which nothing can cover."

But she may be authorized by a Judge—C. C. 178.

But if the divorce be operative the rule is of course inapplicable. The crucial question is whether the divorce so obtained from the Supreme Court of the State of New York, has force in the Province of Quebec.

In the Province of Quebec the law recognizes no right of divorce; it can only be obtained through the legislative force of the Dominion Parliament.

The main contention of the appellant is that at the time the divorce was applied for, the parties had their domicile in the Province of Quebec, and that the Supreme Court of the State of New York had no jurisdiction.

It is contended that it is actual domicile that gives jurisdiction in such cases, and that the wife being incapable of having any domicile save that of her husband, the actual domicile of Virginia Gertrude Stevens was in the Province of Quebec, in Canada, at the time she adopted her proceedings for divorce, and that she could not legally resort to any jurisdiction other than in the Province of Quebec or Dominion of Canada to obtain it.

That rule would have a very reasonable application if the actual domicile of the husband was the domicile of origin of the parties, or was even their matrimonial domicile, but there are strong, to my mind, convincing reasons why it should not apply to the present case.

In the first place the parties are citizens of another State, to a certain extent still owing allegiance and obedience to its laws, which obligations they have never repudiated, nor have they ever renounced to their claim for their protection, although by passing into another State they have thereby undertaken not to offend against any of its institutions or laws. The law of the country to which they have removed does not recognise any legal right to a divorce, although it may be granted by the legislative force of an act of Parliament. Their own original State to which they still owe allegiance recognises a legal right to divorce for cause. In entering into the contract of marriage both parties stood on the same ground as regards the validity of the contract and the conditions of their consent. The subjection of the wife to the husband did not impair these conditions or the right of either party to invoke them. They married under a law which made the contract subject to dissolution for cause. Admitting that the wife undertook to follow her husband, it was always subject to the right to invoke the condition, that if the husband was unfaithful in the execution of the contract she could, for cause sufficient according to the law where the contract was made, ask for its dissolution. Could the husband by carrying her to a country where this right was not recognised deprive her of it? It seems unreasonable to say that he could. Would such an act not be a fraud upon her rights? In my opinion it would. It is vain to say that on account of the subjection of the wife she could not raise the point. Her subjection is on condition that the husband fulfils the contract on his part. What goes to the validity of the contract revives the right of the wife as a party *sui juris* seeking for its fulfilment. If the argument of actual domicile were allowed to prevail, it would in every such case put it in the power of the husband to defeat the wife's right by taking her to a place where her right could not be enforced, or even himself removing to such a place, for by fiction of law and at least for certain, and perhaps for most purposes, his domicile would be held to be that of his wife also. Again, in this particular instance the parties were citizens of New York, they made their contract there, admitting that they afterwards resided abroad. If both parties found themselves in the State of New York, would a *bona fide* suit there, not subject to the suspicion of fraud or evasion, not be competent to the parties? There seems no valid reason why it should not. The act performed in this case was equivalent to the case stated. V. G. Stevens being in the State of New York, cited Fisk from Montreal, Canada; he appeared,

which was equivalent to his being in New York and being served there; he made no objection to the jurisdiction and was condemned on evidence. Can he now repudiate the force of that decree? It is said that consent does not give jurisdiction. That is true of defect of authority in the tribunal, but it is not true of voluntary submission to or coming within the jurisdiction of a tribunal that has authority, more especially as regards a personal obligation in respect of which its fulfilment may be claimed anywhere that the law recognises it to have binding force. Especially is it appropriate that the sovereign authority which gave the contract its binding force should be the one to decree its dissolution for default of the fulfilment of the essential conditions on which its permanence was to depend.

It perhaps might, with reason, have been argued that if the tie had been created within the sovereign authority of a State whose laws did not permit of a dissolution, and the parties afterwards resorted for a divorce to New York, where the law permitted it, such divorce might be good within the State of New York, but would not be effective in the State or country of their matrimonial domicile.

It was argued that the Imperial Statute establishing the Divorce Court there, in giving authority to a resident there to be plaintiff in a divorce suit, exceeded and became an exception to the general rule which required the parties to be actually domiciled within the jurisdiction, but it seems to me that this argument is based upon the supposition that there is or ought to be such a general rule, the reason of which is not only doubted, but seriously questioned, and as I have already shown, puts it in the power of the husband to deprive the wife of all remedy. It might rather be inferred that the English legislation was the negation of any such rule, and in fact the sanction of a contrary rule as correct in principle.

Our own Civil Code, Art. 6, says:—"An inhabitant of Lower Canada, so long as he retains his domicile therein, is governed, even when absent, by its laws respecting the status and capacity of persons, but these laws do not apply to persons domiciled out of Lower Canada, who, as to their status and capacity, remain subject to the laws of their country."

This should be true as regards other countries claiming jurisdiction over their subjects in Canada.

Bishop ("Marriage and Divorce") considers that a wife may acquire a domicile for the purposes of a divorce. This may be more true as between the States of the Federation than in regard to foreign countries, but the case is different when she is sought to be deprived of one.

It is to be borne in mind that the status of strangers is not created, but is only recognised here, that its creation abroad would have no force here save by comity, and the change of status operated by the power that created it, leaves the parties strangers with the status only which the sovereign power, to which they owe their allegiance, has given them, and in this case there is the same reason for the recognition of the status given them by the dissolution of the marriage as that first given them by the marriage itself; both acts equally depend on the foreign law, the force of which is only recognised by comity.

Acts of voluntary jurisdiction recognised by the sovereignty of each country as strictly speaking no judicial act has force beyond the sovereign territory for which and by whose power it is promulgated.

Foelix, t. 2, p. 384, No. 10, 2me ed.:—"Quant à la validité intrinsèque et pour ce qui concerne le futur conjoint étranger, il faut appliquer les lois du pays de son domicile, surtout ce qui est relatif à l'état et à la capacité de sa personne." See also *Muller* v. *Hilton*, 13 L. A. R., p. 1.

Le droit international, théorique et pratique, par Charles Calvi, 2me ed., t. 1, p. 366, § 247: "Si la célébration des mariages est une affaire d'intérêt public et social, la dissolution du lien conjugal n'a pas une importance moindre; elle est régie par les mêmes principes de jurisprudence internationale. Ainsi la dissolution d'un mariage judiciairement prononcée par voie de séparation de corps et de biens, ou par voie de divorce conformément aux lois du pays où le mariage a été célébré et où les conjoints avaient leur domicile, produit ses effets dans toute autre contrée. Mais d'après quelle règle se guider et quel principe doit-on appliquer quand la rupture du lien conjugal est poursuivie dans un autre pays que celui de la célébration du domicile, ou dans un pays dont la législation diffère de celle de la patrie des conjoints, c'est là une

délicate question de droit international privé, qui a suscité plus d'un conflit. Pour la résoudre il faut tenir compte de la nationalité et du statut personnel des époux. Si les conjoints appartiennent à un pays et à une communion qui repoussent le divorce, c'est-à-dire la rupture absolue définitive du lien conjugal, et admettent seulement la séparation de corps et de biens, ils ne peuvent légitimement tant qu'ils conservent la même nationalité, la même croyance religieuse, faire dissoudre leur union matrimoniale en se transportant dans un pays où prévaut le divorce avec faculté de conclure un autre mariage ; car s'ils agissaient ainsi ils s'exposeraient quand ils retourneraient dans leur patrie à y être judiciairement poursuivies et condamnés commes bigames. Lorsqu'au contraire les époux appartiennent à un pays dont les lois intérieures sanctionnent le divorce, et qu'usant du bénéfice des lois qui régissent leur statut personnel ils ont régulièrement fait prononcer la dissolution complète de leur mariage, ils doivent partout ailleurs être considérés comme célibataires et libre de contracter une nouvelle union matrimoniale.

"En résumé, la règle à suivre en cette matière est bien moins la loi du domicile que celle de la religion, de la nationalité, et du statut personnel qui en découle."

The Italian author Fore, as translated into French by Pradier Foderé, edition of 1875, at p. 216, No. 120: after giving the opinion of Rocco, Italian Jurist, wholly to the effect that the dissolubility or indissolubility of the marriage tie, in other words the question of the right of divorce, must be determined by the law of the matrimonial domicile. This proposition in its broadest sense, Fore disputes, but after reviewing the jurisprudence of different countries, including England, France, Austria, Prussia, the United States of America and Italy, and the opinions of various Jurists, including Merlin, Westlake, Dalloz, Demolombe and others, as well as different arrêts involving various phases of the question, he concludes by giving a kind of qualified assent to Rocco's opinion, which he does in this wise. He puts the question: "Si un homme légitimement divorcé dans sa patrie peut se remarier dans un état tiers dont la loi ne permet pas le divorce." He remarks: "Cette question a été longuement discutée par les jurisconsultes et par les tribunaux." He reviews the opinions and decisions on the subject, the weight of which are in favor of validity, and concludes as follows:—

No. 134. "Nous partageons la même opinion et en en faisant l'application nous disons que l'officier de l'Etat Civil ne peut refuser d'assister au mariage d'une anglaise ou d'une polonaise valablement divorcée, et qui voudrait se remarier en Italie. En effet il est certain que la condition juridique d'un étranger et sa qualité de père, de fils, d'époux, doit se déterminer d'après la loi de sa nation, que les effets qui dérivent de l'état juridique d'un étranger ne peuvent être empêchés que lorsqu'on oppose une loi d'ordre publique de notre Etat; que l'officier de l'Etat Civil ne peut déclarer la dissolution du mariage non existant, quand celuici a été déjà légalement dissous, et qu'il ne peut empêcher le divorcé de contracter un nouveau mariage, lequel lorsque le premier est dissous, n'est nullement contraire à nos lois, le divorcé étant dans la situation légale d'un homme non marié. Nous concluons donc que défendre à qui est légalement divorcé de pouvoir. contracter un nouveau mariage en Italie est contraire à nos institutions et à nos lois."

See *Harvey* v. *Farnie*, L. R. Appeal cases, vol. 8, p. 43; Law Times Rep. for 1859-60, vol. 2, p. 542.

Monk, J., concurred in the above dissent.

Ramsay, J. This action was brought by the respondent, who alleges that she is the divorced wife of the appellant, asking him for an account of the fortune she brought him at her marriage and which passed into his hands.

She alleges that she was married in the State of New York in May 1871, New York being then the domicile of both parties, that by the law of that State, there being no ante-nuptial contract, she had the absolute control of her property, and she alleges further that by a decree of the Supreme Court of New York she was divorced from her said husband, and that she is thereby in the position of a *feme sole* and entitled to bring this action as such.

The appellant pleaded that the parties after their marriage came to Montreal and acquired a new domicile in the Province of Quebec, which new domicile they had at the time of the pretended divorce which is therefore null, and that plaintiff could not bring this suit.

There was also a *défense en fait.*

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

another State. Summoning Mr. Fisk domiciled in Canada to appear in New York is summoning him to appear before those who are not his natural judges. And his appearance, without further proceedings, does not appear to me to alter the matter.

It has been said that this action lies even if there be no divorce, and that the husband is obliged to account to his wife for her property. This is very true, but it is contended that she has brought the action as an unmarried woman and without authorization. The prohibition of our law as to the wife appearing in judicial proceedings without the authorization of the husband is express (176 C. C.), and I am not aware that there is any mode of supplying this authorization after the suit is commenced. "She cannot appear," and therefore she is not rightly before the Court, and it is not a question of amendment. To substitute an authorization by the Court is to antedate a power, and one which can only be exercised by the Court on the refusal of the husband (C. C. 178) or if he be interdicted or absent, (C. C. 180). But it is said the want of authorization has not been properly pleaded, and a case of *Anntaya* v. *Dorge* et al., (6 R. L. 727) was cited in support of the pretention that this question could only be raised by a preliminary plea. I question very much whether if the defect appears on the face of the proceedings it is necessary to plead it at all, but I think it at all events is a good plea to the merits. It is not a question of *status* only, it is a lack of power. But in addition to this, the whole of the action turns on the alleged fact that she is an unmarried woman.

I am therefore to reverse and dismiss the action *sauf à se pourvoir*.

The following is the judgment:—

"Considering that the parties in this cause were married in the year 1871 in the State of New York, one of the United States of America, where they were then domiciled;

"Considering that shortly after, to wit, about the year 1872, they removed to the City of Montreal, in the Province of Quebec, with the intention of fixing their residence permanently in the said Province;

"And considering that the said appellant has been engaged in business and has constantly resided at the said City of Montreal since his arrival in 1872, and that he has acquired a domicile in the Province of Quebec;

"And considering that the female respondent has only left the domicile of her husband at the City of Montreal in 1876, and obtained her divorce from the appellant in the State of New York in the year 1880, while they both had their legal domicile in the Province of Quebec;

"And considering that under article 6 of the Civil Code of Lower Canada, parties who have their domicile in the Province of Quebec are governed even when absent from the Province by its laws respecting the status and capacity of such parties;

"And considering that according to the laws of the Province of Quebec marriage is indissoluble, and that divorce is not recognized by said laws, nor are the Courts of Justice of the said Province authorized to pronounce for any cause whatsoever a divorce between parties duly married;

"And considering that the decree of divorce obtained by the female respondent in the State of New York has no binding effect in the Province of Quebec, and that notwithstanding such decree, according to the laws of the said Province the female respondent is still the lawful wife of the appellant, and could not sue the said appellant for the restitution of her property without being duly authorized thereto;

"And considering that the said respondent has neither alleged nor produced any authorization, as required by law, to institute the present action, and that there is error in the judgment of the Superior Court rendered at Montreal on the 25th day of February, 1882;

"This Court doth reverse the said judgment, and proceeding to render the judgment which the said Superior Court should have rendered, doth dismiss the action of the said respondent *sauf à se pourvoir*, with costs, as well those incurred in the Court below as on the present appeal (Judges Monk and Cross *dissenting*)."

Judgment reversed.

Kerr & Carter for the Appellant.

E. Lafleur for the Respondent.

SUPERIOR COURT.

MONTREAL, September 27, 1883.

(In Chambers.)

Before TORRANCE, J.

MILLOY v. O'BRIEN, and BURY et al., assignees, and MILLOY, petitioner.

Costs in Review—Discontinuance after factum filed.

Where the party inscribing in Review discontinues after inscription and after factum has been filed by respondent, the latter is entitled to costs as of a case settled before hearing.

Motion to revise taxation of costs, which allowed defendant's attorney a fee of only $6, (instead of $20 as claimed), where the plaintiff had desisted from his inscription in Review after defendant's factum was filed.

The JUDGE granted the motion and allowed a bill of $30.55, viz.: appearance $3, attorney $20, factum $6, bill $1.55.

Motion granted.

Doherty & Doherty, for plaintiff.

J. L. Morris, for defendant.

CIRCUIT COURT.

MONTREAL, October 16, 1883.

Before RAINVILLE, J.

EVANS v. HURTUBISE, and DE BERCZY, *adjudicataire*, petitioner.

Procedure—Jurisdiction.

Under a judgment in the Circuit Court certain real estate of defendant was sold by the sheriff, who filed his return in the Superior Court, and the report of distribution was made there. The defendant refused to give possession. Held, that the application of the purchaser for a writ of possession should be made to the Superior Court and not to the Circuit Court.

RAINVILLE, J., said although the suit was in the Circuit Court, this Court had no jurisdiction to grant a writ of possession, as the sheriff's return had been filed in the Superior Court, and the report of distribution had been made there.

Petition dismissed without costs.

J. L. Morris, for petitioner.

Loranger & Beaudin, for defendant.

RECENT QUEBEC DECISIONS.

Curator to délaissement.—The functions of a curator to a *délaissement* cease by the payment of the hypothecary debt, *ipso facto.*—*Moncatel* v. *Ross*, 27 L. C. J. 218.

Jurisdiction—Cause of action.—Le contrat par un *negotiorum gestor* ne lie les parties qu'après que l'obligé a été averti par le représenté qu'il le ratifiait, que le lieu du contrat est celui où l'obligé en a reçu et accepté la proposition, et qu'une condition de livraison dans la province de Québec n'est pas suffisante pour donner juridiction au tribunal du district où elle devait s'effectuer, et permettre d'y assigner la partie qui résidait et s'est obligé dans la province d'Ontario.—*Tourigny* v. *Wheeler*, Court of Review, Quebec, Stuart, Casault and Caron, JJ., 9 Q. L. R. 198.

Quebec Controverted Elections Act, 1875—*Deposit.*—The petitioner, and not his attorney, is given by the Statute the right to withdraw the deposit.—*Dionne* v. *Gagnon*, S. C., Quebec, Alleyn, J., 9 Q. L. R. 210.

License Act—Prohibition.—The Legislature of the Province of Quebec was duly vested, under the B. N. A. Act, 1867, with power to enact the provisions contained in the 2nd and 71st sections of "The Quebec License Law of 1878."—*Dion* v. *Chauveau et al.*, S.C., Quebec, Alleyn, J., 9 Q. L. R. 220.

GENERAL NOTES.

In *Mullaly* v. *People*, 87 N.Y. 367, the dog was eulogized by the Court in the following strain:—"When we call to mind the small spaniel that saved the life of William of Orange, and thus probably changed the current of modern history (2 Motley's Dutch Republic, 398); and the faithful St. Bernard, which, after a storm has swept over the crests and sides of the Alps, starts out in search of lost travellers, the claim that the nature of a dog is essentially base, and that he should be left a prey to every vagabond who chooses to steal him, will not now receive ready assent."

The French "executioner of high works" for the time being is M. Diebler. M. Diebler succeeded the better known M. Roch. If an annalist in the *Figaro* is to be believed, the existing executioner languishes for want of occupation, and is by no means grateful for M. Grévy's excessive humanitarianism in keeping him in enforced idleness. He used to be in the enjoyment of a salary of £320 a year, but in consideration of the office being almost a sinecure it has recently been reduced to £240. M. Diebler naturally is not content, and longs for more heads to operate on, for which he is entitled to an extra fee of £8 and travelling expenses.