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THE TEMPORALITIES FUND CASE.

We have now before us the full text of the opinion of the Judicial Committee of the Privy Council in the case of *Dobie & The Temporalities*. It is very elaborate, and it declares that the appellant must have his costs against the respondent, as he has had "substantial success." Such "costs are directed to be paid by the members of the respondent's corporation as individuals."

The substantial success consists in this:—That the Act of the Quebec Legislature is declared to be beyond the powers of that Legislature; that the Board formed under that Act is illegally constituted; that Mr. Dobie had an interest to seek the injunction; and that the injunction is maintained.

The judgment declines to declare that the funds are held by the respondents "in trust, for the benefit of the Presbyterian Church of Canada in connection with the Church of Scotland, and for the benefit of the ministers and missionaries who retain their connection therewith, and who have not ceased to be ministers thereof, and for no other purpose whatever." The reasons for not making this declaration are succinctly given. Their Lordships say:—"It is obviously inexpedient to make any declaration of that kind. It would be a mere repetition of the language of the Act of 1858, by which the trust is regulated, and would decide nothing as between the parties to the present suit."

The judgment also declines to declare that the clergymen who had joined the new association, but who, previous to 1875, were members of the Presbyterian Church in connection with the Church of Scotland, had lost all interest in the fund, as they were not, save one, in the record. And they add:—"It cannot be determined now, because the appellant has not asked any order from the Court in regard to the formation of the new Board, and has not made the individuals and religious bodies interested parties to this cause."

Incidentally, the opinion deals with matters which have occupied the attention of our Courts, more or less, and generally in the sense that has prevailed here. They seem to hold: that a corporation of a local nature, created by the Legislature of the old Province of Canada, might be destroyed by a local Act of either Ontario or Quebec, so as to make it no longer a corporation in the Province where such Act is passed, but that the measure of the power of destruction was the power of creation. They say:—"The powers conferred by this section upon the Provincial Legislatures of Ontario and Quebec, to repeal and alter the statutes of the old Parliament of the Province of Canada, are made precisely co-extensive with the powers of direct legislation with which these bodies are invested by the other clauses of the Act of 1867." They held that even where the subject is to be dealt with by the Dominion Legislature, it may still be affected by local legislation.

They held that the property of a Dominion created corporation could be taxed by the local Legislature where its property was situated. They say:—"When the funds belonging to a corporation in Ontario are so situated or invested in the Province of Quebec, the Legislature of Quebec may impose direct taxes upon them for provincial purposes, as authorized by section 92 (2), or may impose conditions upon the transfer or realization of such funds," &c. And so the Court of Queen's Bench held in the case of *The Grand Trunk Railway Co. & The Corporation of the Town of Levis*, (at Quebec, 7th March, 1879.) This opinion, taken along with the decisions in the Ontario insurance cases, reduces the case of *Angers & The Queen Ins. Co.* to its narrowest limits; namely, that the Act did not establish a license. Or, as it was said, it was a Stamp Act and not a License Act; and the decision that the local Act of Quebec, 39 Vic., cap. 7, was *ultra vires*, seems to be over-ruled.

It is to be observed that their Lordships distinguish between taxation and confiscation. They add this proviso:—"But that the Quebec Legislature shall have power also to confiscate these funds, or any part of them, for provincial purposes, is a proposition for which no warrant is to be found in the Act of 1867." In other words, the taxation must be either by way of license or be direct. R.

THE SEAMEN'S ACT.

A very interesting case under The Seamen's Act, 1873, *Clarke & Chauveau et al.*, was decided at Quebec on the 8th of last month. Clarke, the appellant, was convicted in his absence of an offence supposed to be under the statute, by the Judge of Sessions of Quebec. The complaint did not pursue the provisions of the act in many essentials. The appellant applied for a writ of prohibition on both grounds, 1st, that he had no jurisdiction, 2nd, that if the statute gave him jurisdiction, it was a special power that was conferred, and that he had not followed the act. The Court of Appeals confirmed the judgment, namely, Tessier, Cross and Baby, JJ.; the Chief Justice and Ramsay, J., dissented. We regret that we are unable to give a complete report of the case, but as the Minister of Justice has introduced a bill on the subject, we hasten to publish Mr. Justice Ramsay's opinion, which criticizes the law severely, and points out its dangers.

RAMSAY, J. After what has fallen from the Chief Justice, it is not perhaps necessary for me to say anything; but the case is one of so great public importance, as affecting the liberty of the subject, the statutory provision before us is so dangerous and exceptional that it appears to me to be a duty to draw attention to it, so that the Legislature may not unwittingly leave such a monument of barbarism longer on the statute book. Section 86 of "The Seamen's Act of 1873" is in the following words:

"86. No person (other than any owner, agent of owner, or consignee of the ship or cargo, or any person in the employment of either of them, or any officer or person in Her Majesty's service or employment, harbor master, deputy harbor master, health officer, custom house officer, pilot, shipping master or deputy shipping master,) shall go and be on board of any merchant ship arriving or about to arrive from sea at the place of her destination before or previous to her actual arrival in dock, or at the quay or place of her discharge, or while she remains in port, without the permission and consent of the master or person in charge of such ship; and if any person (other than aforesaid) goes on board any such ship before or previous to her actual arrival in dock, or at the quay or place of her discharge, or while she remains in port, without the permission and consent of the master or person in charge of such ship, he shall, for every offence, be subject to imprisonment in the penitentiary for any period not less than two years nor more than three years, if such person be unarmed at the time of committing the offence; or five years, if such person be armed with or carries about his person any pistol, gun or other firearm, or offensive weapon at the time of committing the offence; and for the better securing the person of such offender, the master or person in charge of the ship may take any person so offending, as aforesaid, into custody and deliver him up forthwith to any constable or peace officer, to be by him taken before any Judge of a County Court or any Stipendiary Magistrate, Police Magistrate or Judge of the Sessions of the Peace, to be dealt with according to the provisions of this Act."

In short, if any one, save any one of the persons enumerated, goes on board a merchant ship before it arrives or when it is lying in port, without the consent of the master or person in charge of such ship, he shall "for every offence" be subject to imprisonment in the penitentiary for any period not less than two years nor more than three years, or five years if such person be armed. So if a merchant's clerk goes on board the wrong vessel by mistake, he may, and if the law is one which should be executed, he ought to be sent to the penitentiary for two years, and if, by chance, he had a pistol in his pocket, for five years. Criminal intent to give character to the innocent act was far beyond the ken of the modern Draco to whom we owe this law.

If such a law had been decreed in Russia, there would have been a shriek of indignation at its barbarity. That it passed through both Houses of Parliament unobserved, and, at all events, unconsidered, is more than likely. It is one of the inconveniences of printing that it permits and encourages the reproduction of rubbish to such an extent, that it is almost as hard to discover what one desires to see, as it is to find the proverbial needle in the bundle of straw. The author of this section, however, deserves some share of the immortality which belongs to those reckless legislators who are willing to destroy the liberties of the people for the gratification of a whim. Providentially, his execution is as faulty as his conception is dangerous. I do not allude to the general

absence of precision, denoting total ignorance of the mechanics of law-making, which this section exhibits, or to its grammatical construction. I refer to the last words of the section which declare that "the person so offending is to be taken before any judge of a county court or any stipendary magistrate, police magistrate, or judge of the sessions of the peace, *to be dealt with according to the provisions of this act.*" Now, we are invited to declare that these words oust trial by jury, and place the liberty of any person accidentally going on board the wrong ship at the mercy of two justices of the peace, or of a stipendary magistrate. It is not contended that these words are those ordinarily used for con veying jurisdiction; but, if I understand the respondent's pretention, it is assumed,that some of the dispositions of the act are of a character so contrary to the general spirit of criminal legislation, and to the institutions of this country, that we must be more readily disposed to admit it to be the intention of the legislature to create a new jurisdiction, than if the law were of a usual character.

Such a doctrine appears to me to be intolerable. A monstrous law, which, in its eagerness to reach the guilty, confounds innocence and guilt, has no spirit, and its operation must be confined to the narrowest interpretation of its words.

In the present case it is agreed that Section 87 gives almost a similar jurisdiction to the same magistrates as those mentioned in Section 86, and therefore we should infer, it was the intention of the legislature to give the jurisdiction in prosecutions under Section 86. I think the inference is directly the other way. One form of words being used in one section and another in the other, the rule of interpretation is that it was intended to convey different ideas. I therefore say that the words "to be dealt with according to the provisions of this act" are to be made coherent by supposing that the duty of the magistrates is to commit for trial as in the case of any misdemeanour.

Our attention was drawn to a case of *Trimble & Cullen*. It is a very meagre report. It does not pretend to give the words of any of the judges, and I am inclined to think any of the three learned judges who sat in that case would be unwilling to have it supposed that a jurisdiction of a totally novel kind could be given "impliedly." What they probably said was that although not given in the usual and technical manner, the intention of the legislature to give it was sufficiently expressed in words though in a careless and slovenly manner.

The peculiar qualities of the legislator who drew this clause seem to have passed to those who have attempted to put it in force. The case before us in no respect follows the Act: (1) There is no negative averment that the appellant did not belong to the very limited privileged class who may go on board without the permission of the captain or person in charge of the ship; (2) it is not alleged that the person in charge did not give permission; (3) it is not stated that the ship was a merchant ship; (4) the accused was not brought before the magistrate. There was, then, neither jurisdiction over the person or over the subject matter. The magistrate might have as well passed sentence on the President of the United States.

These objections seem technical and unsubstantial to those who only arrive at conclusions from local views of convenience. As Richardson says, in one of his novels, "the doctrine is nothing without the example." But if the use of this foolish law is persisted in, there will be a great scandal some day. Instead of a known crimp, some perfectly innocent person will be arrested, of sufficient importance to render it dangerous to adopt the view about to be sanctioned, and then, I venture to predict, the precedent we are about to create will be swept away without hesitation.

Wise legislators sometimes pass stringent laws to check extraordinary abuses; they never confound innocence and guilt. The wisest pass reasonable laws, and endeavor to have them faithfully executed. In criminal repression, certainty is more effectual than severity.

THE STAMP DUTIES.

After our last issue had gone to press, a bill to repeal the duty on promissory notes, drafts and bills of exchange, was passed through both Houses of Parliament, and received the Royal Assent March 3. It contains but one section, which reads as follows:—

"1. No duty shall be payable on any promissory note, draft or bill of exchange, made,

drawn or accepted in Canada after the fourth day of March, in the present year, 1882, and from and after the said day the Act passed in the forty-second year of Her Majesty's reign, and intituled: "*An Act to amend and consolidate the laws respecting duties imposed on promissory notes and bills of exchange*," shall be repealed: Provided always, that all Acts or enactments repealed by the said Act shall remain repealed, and that all things lawfully done, and all rights acquired under the said Act or any Act repealed by it, shall remain valid, and all penalties incurred under them or any of them, may be enforced and recovered, and all proceedings commenced under them, or any of them may be continued and completed, as if this Act had not been passed: and provided also, that all unused stamps lawfully issued under the said Acts or any of them for the payment of any duty hereby repealed, shall after the said day and until the thirtieth day of June, one thousand eight hundred and eighty-two, be received at their face value in payment of any money payable to Her Majesty for the public uses of Canada, or in exchange for postage stamps of like face value."

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Jan. 19, 1882.

DORION, C. J., RAMSAY, TESSIER, CROSS, BABY, JJ.

BAIN (plff. below), Appellant, and THE CITY OF MONTREAL (deft. below), Respondent.

37 *Vict.* (*Que.*), *c.* 51, *s.* 192—*Assessment for footpaths—Principle of Assessment.*

The action was to recover an amount paid to the City of Montreal for assessments under assessment rolls made by the City Surveyor for the cost of flagstone footpaths in Dorchester and St. Catherine streets.

These footpaths were made by the city under sect. 192 of the city charter (37 Vict. c. 51) which is as follows:—

"192. It shall be lawful for the council of the said city to order, by resolution, the construction of flagstone or asphalt sidewalks, or street grading in the said city, and to defray the cost of the said works or improvements out of the city funds, or to assess the cost thereof, in whole or in part, as the said council may, in their discretion, deem proper, upon the proprietors or usufructuaries of the real estate situate on each side of such streets, public places or squares, in proportion to the frontage of the said real estate respectively; and in the latter case it shall be the duty of the city surveyor to apportion and assess, in a book to be kept by him for that purpose, the cost of the said works or improvements, or such part thereof as the said council may have determined should be borne by the said proprietors or usufructuaries, upon the said real estate, according to the frontage thereof as aforesaid; and the said assessment, when so made and apportioned, shall be due and recoverable, the same as all other taxes and assessments, before the recorder's court."

Under this section a resolution was adopted by the Road Committee, that a flagstone footpath be laid in certain streets, and that the cost be borne one-half by the Corporation and the other half by the proprietors of the real estate situate on each side of such streets, by means of a special assessment to be levied in proportion to frontage of their properties respectively.

The council adopted the report of the Road and Finance Committees, embodying this resolution.

The appellant paid the assessment under protest, and then brought the present action to test its validity.

The grounds upon which the assessment rolls in question are contested are stated in the declaration as follows:

That it is on the sole strength of the resolution of the city council adopting the above reports of the said road and finance committees of the city council, that the city surveyor has proceeded to introduce in the said streets a new sidewalk, removing the one formerly existing, which was in a good state of preservation, and in many parts thereof of durable and permanent materials, and using the materials thereof without accounting for the same and making any allowance for the same. And the said plaintiff alleges that at the time the said city caused the sidewalk to be constructed in front of her said properties, the said plaintiff had good, serviceable and permanent sidewalks in front of her said properties.

And the said plaintiff further alleges that the

said resolution as given above is altogether indefinite, and such as could only lead to the most arbitrary proceedings on the part of the official charged with the duty of carrying out the same. That while it orders the laying of a flagstone footpath in Dorchester and St. Catherine streets, it does not determine the kind of stone, the width of sidewalk or the quality of work.

That in the absence of a provision of statute allowing the system to be introduced gradually, the council could not force the proprietors in said streets to pay the cost of one half of the new sidewalks, while the proprietors in other streets are wholly provided with sidewalks out of the city funds without any contribution on their part.

That moreover the said assessment has been based on an illegal principle, inasmuch as more has been charged plaintiff than the said sidewalk has cost in proportion to the frontage of plaintiff's said properties, the plaintiff being called upon to pay her proportion of the cost of the sidewalk throughout the whole of said Dorchester and St. Catherine streets, instead of the cost of the sidewalk actually laid in front of the plaintiff's properties.

The plea of the city was a general one and amounted to this, that all the proceedings in the matter of this tax were regular and legal, and that the plaintiff by paying voluntarily has acquiesced.

The action was dismissed by the Superior Court, Montreal, Papineau, J., the judgment being as follows:

" Considérant que la demanderesse n'a pas prouvé tous les allégués de sa déclaration nécessaires au soutien de sa demande entière;

" Considérant qu'une grande partie de la preuve orale est irrégulière en ce qu'on y a plutôt établi l'opinion des témoins, que les faits qui auraient pu justifier leur opinion ou manière de voir;

" Considérant spécialement que la demanderesse n'a pas prouvé qu'elle eut devant ses propriétés aux dates mentionnées dans sa déclaration, aucun trottoir de matériaux durables et permanents, et à ses propres frais, mais qu'il est établi au contraire qu'il n'y avait en front de ses dites propriétés que des trottoirs faits de bois et payés par la corporation défenderesse, à même les fonds prélevés sur tous les contribuables de la ville en général;

" Considérant qu'il n'est pas prouvé que depuis l'adoption de la résolution en question dans cette cause, il ait été fait dans la ville de Montréal, des trottoirs permanents sans que le coût en ait été réparti moitié sur les propriétés des contribuables riverains en proportion de l'étendue du front de leurs propriétés, et moitié sur les fonds communs de la corporation de la cité, comme dans le cas dont se plaint la demanderesse, et qu'il est prouvé au contraire qu'il a été pourvu de la même manière au paiement de tous les trottoirs dits permanents, et que le coût d'aucun de ceux-ci n'a été mis à la charge du seul fond commun de la corporation;

" Considérant en fait que si d'un côté la résolution dont se plaint la demanderesse est trop vague en ce qu'elle ne détermine ni la largeur des dalles de pierre pour faire les trottoirs y mentionnés, ni le coût de ces trottoirs ni la qualité de l'ouvrage, de l'autre côté la demanderesse ne se plaint pas que les dits trottoirs aient été faits d'une largeur disproportionnée à la largeur ou à l'importance des rues où ils ont été faits, ni qu'ils aient coûté trop cher, ni qu'ils soient d'une qualité inférieure, ni qu'ils soient d'une qualité supérieure à ce qu'ils auraient dû être, ni que la demanderesse ait souffert aucune injustice attribuable à ce défaut particulier de précision dans la dite résolution;

" Considérant qu'il n'est pas prouvé et qu'il n'est pas même allégué par la demanderesse que durant les travaux ni en aucun temps, avant la demande du paiement des dits travaux, en vertu des dits rôles, la demanderesse ni un seul autre contribuable se soit plaint que les dits trottoirs ou les matériaux dont ils ont été faits fussent de qualité inférieure ou trop dispendieuse, ou n'eussent pas une largeur convenable et appropriée aux rues où ils ont été faits;

" Considérant en droit qu'il n'y a pas lieu de prononcer la nullité d'un procédé lorsqu'il n'en est pas résulté d'injustice ou grief à la partie se plaignant de tel procédé;

" Considérant qu'il n'est pas établi que la demanderesse ait été appelée à payer double taxe en ce que des matériaux de trottoirs pour lesquels elle aurait eu à payer une proportion plus forte que celle des contribuables en général de la cité, auraient ensuite été enlevés et employés

à faire ou réparer des trottoirs faits à même les deniers du fond commun de la cité ;

" Considérant que la demanderesse n'a pas établi qu'en n'étant chargée que de la moitié du coût des trottoirs faits sur le front de chacune de ses propriétés, la somme d'argent qu'elle aurait eu à payer, eût été moins forte qu'en répartissant la moitié du coût entier de tous les trottoirs faits dans une rue sur les immeubles bordant cette rue, en proportion de l'étendue du front de chacun de ces immeubles comme on l'a fait par les rôles dont elle se plaint ;

" Considérant d'ailleurs qu'aux termes de la loi (37 Vict., chap. 51, sect. 192), l'inspecteur de la cité de Montréal ne pouvait pas charger aux propriétaires ou usufruitiers des immeubles situés sur les rues en question, la moitié de ce que le trottoir avait actuellement coûté sur chacun de ces immeubles en particulier, mais qu'il devait cotiser pour la moitié du prix entier des dits trottoirs, les dits immeubles suivant l'étendue de leur front ;

" Considérant qu'aux termes du dit acte et spécialement des sections 114 et 192, le conseil de ville n'était pas expressément tenu d'introduire le nouveau système de trottoirs dits *permanents* dans toutes les rues de la ville en même temps, et qu'il y a raison de croire que le conseil a suivi l'intention du législateur en n'introduisant ce nouveau système que graduellement ;

" Considérant que si d'un côté les contribuables ayant des immeubles sur les dites rues, sont appelés les premiers à payer pour ces trottoirs qui sont prouvés être une amélioration, sans être cependant déchargés des taxes qu'ils paient en commun avec tous les autres citoyens, ils ont aussi avant ces derniers l'avantage de jouir plus particulièrement de l'amélioration effectuée devant leurs propriétés pendant que les autres ont encore à souffrir les inconvénients de l'ancien régime ;

" Considérant que la demanderesse n'a pas demandé par ses conclusions la nullité de la résolution et des rôles de cotisation en question, mais qu'elle conclut seulement au remboursement des sommes de deniers qu'elle a payées en plusieurs versements à plusieurs mois d'intervalle en vertu des dits rôles ;

" Considérant que ces paiements ainsi effectués sans protestation sont une reconnaissance de la validité des rôles à l'encontre desquels la demanderesse n'a allégué aucune cause de nullité réelle et actuelle ;

" Considérant cependant que la défenderesse n'avait pas le droit de réclamer l'intérêt au taux de dix, mais seulement de six pour cent sur les arrérages de la dite cotisation, et que la demanderesse a ainsi payé pour intérêt, une somme de $30.36 qu'elle ne devait pas pour intérêt ;

" La cour maintient la dite action de la demanderesse pour la dite somme de $30.36, et condamne en conséquence la dite défenderesse à payer à la demanderesse la dite somme de $30.36, cours actuel avec intérêt, etc., et déboute la demanderesse de sa demande pour le surplus, avec dépens," etc.

RAMSAY, J. The statute in question confers a special power on the Corporation of the City of Montreal to substitute permanent footpaths, of other materials than wood, instead of the wooden foothpaths usually made. The question is whether the respondent has acted within the scope of the power thus conferred. It is said that the Corporation had no power to make the new footpath partially, but was obliged to make permanent footpaths all over the town simultaneously ; that the resolution was not sufficiently explicit, and that the directions of the Road Committee to supplement the resolution, not being sanctioned by a resolution of the Corporation, were valueless.

The former of these objections is based on a grievance which is more theoretical than real. It is contended that if the permanent footpaths are to be made over a portion of the town, and if the proprietors are to pay a proportion of the cost of the new footpaths, they will be twice taxed for their own stone footpath, in proportion to their frontage, and for the wooden *trottoirs* of others. This is true as far as it goes, but it is impossible for the Court to arrive at the conclusion, that, because of this minute inequality, the Legislature meant to impose a condition which, if possible, would ruin either the Corporation or the proprietors, or both. But were it otherwise it would hardly entitle appellant to succeed. She seeks to recover back money she has paid for this improvement, and in which, consequently, she has acquiesced. If she were to gain her suit, she would retain the advantages of an exceptional improvement, for which she ought to pay, for nothing.

The complaint that the resolution is not suf-

ficiently precise is tolerably vague. There is no end to the detail conceivable. Something must always remain for execution, which no precision could cover, and I don't think that the resolution in question leaves any doubt as to what the Corporation required to be done. The objection seems to be that one width of flagstones was to be laid down in Catharine street and another width in Dorchester street. Of which order does the appellant complain? If it was too narrow in one street, her action was to have the flagging made wider, at a greater cost; if too wide in the other, her action was for a reduction. Her action is based on no consideration of the kind. There was still another grievance—the assessment was illegal. Proprietors who had permanent pavements were called upon to pay for the new pavements. Of this appellant cannot complain, for the footpaths before her property were all of wood. I am of opinion to confirm.

Judgment confirmed.

Barnard, Beauchamp & Creighton for the Appellant.

R. Roy, Q.C., for the Respondent.

SUPERIOR COURT.

MONTREAL, Feb. 25, 1882.

Before TORRANCE, J.

STEVENS v. FISK.

Divorce obtained by wife in foreign country—Right of wife to an account.

The parties were married in the State of New York, without antenuptial contract, and their matrimonial domicile was in that State. Subsequently the husband changed his domicile to the Province of Quebec. The wife afterwards obtained a divorce in the Supreme Court of the State of New York, on the ground of the adultery of the husband. Held, that the decree of the Supreme Court of New York, was operative to dissolve the marriage, notwithstanding the fact that the domicile of the husband was at the time in the Province of Quebec; and that the divorced wife was entitled to ask an account from her husband of his administration of her property.

The plaintiff's case was that on May 7th, 1871, the plaintiff and defendant, both being domiciled in New York, were duly married in that city without ante-nuptial contract. Before and at the time of the marriage the plaintiff had a fortune in her own right amounting to over $220,000, and by the law of the State of New York applicable to this case she retained the separate ownership and entire control of this fortune after her marriage. Very soon after her union with the defendant the plaintiff entrusted to him the management of her fortune and put in his possession all her money, valuable securities and property of every kind. During several years the defendant had possession of this fortune and administered it, making occasional payments to plaintiff on account of the revenues. In 1876 the plaintiff, dissatisfied with defendant's management of her fortune, demanded the return of all her property with an account of his administration. Thereupon the defendant handed back to plaintiff a very small portion of her valuable securities in the shape of bonds, but gave her no account and has ever since refused to do so. In December, 1880, the plaintiff obtained from the Supreme Court of New York a divorce absolute in her favor on the ground of her husband's adultery. To this demand for an account the defendant pleaded first, by demurrer, on the ground that it appeared from the declaration that the divorce therein alleged had been obtained while the consorts were domiciled in Canada, and the divorce was in consequence null. This demurrer was dismissed by Mr. Justice Rainville, inasmuch as the alleged invalidity of this divorce could not prevent the plaintiff from claiming an account from the defendant, and as her action would lie even if she were still the wife of the defendant.

The defendant then raised the same point by a plea to the merits in which, while admitting the marriage, he alleged that immediately thereafter the consorts removed to Montreal with the intention of making it the seat of their permanent and principal establishment; that at the time of the divorce they were domiciled in Montreal, and that the divorce is in consequence null and void.

The plaintiff contended,

1st. That by the laws of the State of New York, no community of property is created between persons who are married without ante-nuptial contract.

2nd. That at the time of her marriage the

plaintiff had the fortune stated in the declaration, amounting to about $224,000.

3rd. That shortly after the marriage the defendant obtained possession of the plaintiff's fortune as agent and trustee, and administered the same until 25th of September, 1876.

4th. That the defendant returned to the plaintiff on the date last mentioned only a small portion of her valuable securities, and has never rendered an account of his gestion of her fortune.

5th. That in the month of December, 1880, the plaintiff was duly divorced from the defendant, by decree of the Supreme Court of New York on the ground of defendant's adultery.

6th. That the effect of the said divorce is as complete and extensive as a divorce granted by the Parliament of the Dominion of Canada.

W. H. Kerr, Q.C., for the defendant, contended: 1st. That the decree of divorce pronounced by the Supreme Court of the State of New York is null and void and of no effect, inasmuch as at that time neither of the parties to the action was domiciled in the State of New York.

2nd. That no consent or appearance by the present defendant could give jurisdiction to that Court to pronounce such decree.

3rd. That defendant being domiciled in the Province of Quebec, no Court had any jurisdiction to dissolve the marriage.

4th. That plaintiff not being authorized either by him or by this Court to institute this action, but bringing the same as if she were a spinster, the action could not be maintained in the event of the divorce being held null and void, for want of power to *ester en justice*.

PER CURIAM. There is no question as to the facts of this case. The parties were domiciled in New York when they married and did not change their domicile for some time. The chief question is one of law, whether the decree of the Supreme Court of New York was operative to dissolve the marriage at a time when the domicile of the husband was in Lower Canada. Bishop, Marriage and Divorce. Vol. 2 (728). When the wife is plaintiff in a divorce suit, it is the burden of her allegation, that she is entitled, through the misconduct of her husband, to a separate domicile. If she fails to prove this, she fails in her cause; if she proves this, she establishes her cause. S. 128 (730). And the doctrine that for purposes of divorce, the wife may have a domicile separate from her husband, is well established in the American tribunals. §. 156 (731). * * * Having therefore arrived at this conclusion, we shall have no difficulty in settling, upon principle, that, as a question free from any statutory incumbrance, the Courts of the actual *bona fide* domicile of either may entertain the jurisdiction. If it were not so, then both States, where the domicile of the one was in the one State and that of the other was in the other State, would be deprived of the right to determine the status of their own subjects."

This appears to be a most reasonable doctrine and should be followed by the Court in this case. The husband having committed adultery, the wife had a right to complain of it before the Court of her matrimonial domicile which was then her actual domicile, and the husband acquiesced in the proceeding by his appearance therein and submission to the jurisdiction. It is unnecessary to discuss the ancillary questions started by the defendant. His plea is overruled and the order for the account made.

Judgment for plaintiff.

E. Lafleur for plaintiff.

H. L. Snowdon for defendant.

W. H. Kerr, Q. C., counsel.

GENERAL NOTES.

DEATH OF A NOTED LAWYER.—The cable brings news of the death of Edwin John James, formerly one of Her Majesty's Counsel, and M.P. for Marylebone. The *N. Y. Herald* says:—"His history is singular. Born in 1812, he was educated at Chichester and became a member of the Bar in 1835. He was soon leader of the Home circuit and enjoyed an extensive practice. Sharp as a needle to detect a flaw in an indictment, always ready at reply and inimitable at ingratiating himself with a hostile jury, he rose to eminence at the criminal bar. In bankruptcy matters he was equally keen, but that branch of the profession he relinquished early to engage in more lucrative pursuits. Before election committees he was the counsel most dreaded by newly elected members of Parliament who had been guilty of corruption. As an instance of his ability to deal with these worthies it may be mentioned that in 1857, he was concerned in thirty-one election petitions, and he caused twenty-seven members to be unseated for bribery and other dishonest practices. This was a good percentage of successes, it must be confessed. He attained eminence, was made Queen's Counsel, and in 1854 was chosen by Lord Palmerston to fill the honorable post of First Recorder of Brighton. He was elected to Parliament as a radical in 1859, and made his mark as a dashing speaker and a shrewd tactician. In the following year he went to Italy and spent a few weeks in Garibaldi's camp. His letters to the daily papers gave graphic accounts of the guerilla warfare then being waged by the hero of Caprera. On his return misfortune overwhelmed him. He was accused of professional misconduct, and the charges were laid before the Benchers of the Inner Temple. It is not necessary here to go into particulars of the offences of which he was accused. Suffice it to say that the Benchers considered them fully proved, and Mr. Edwin James was disbarred. He came to New York and was admitted to the Bar of this city and began to practice. The old charges against him were revived, and it was sought to expel him from the Bar here. He defended himself very courageously and explained away many of the allegations against him, and to such purpose that resolutions declaring belief in his innocence were passed by a large meeting of prominent lawyers of the city. For some years he remained in New York and then he returned to England and petitioned to be restored to the Bar. All his efforts failed, however. Then, although debarred from practising in the courts, he made a good income by giving advice to prospective litigants. He was a *bon vivant* and a popular man. Illness attacked him and he had little or no balance at his banker's. Some of his old professional friends came to the rescue. A subscription was started a few weeks ago and just as it had begun to assume fair proportions Mr. James died. Thus ended the career of a man who twenty years ago stood at the top of his profession, was earning $50,000 a year—and living up to every dollar of it—and who had every prospect of an honorable post on the judicial Bench."