45, 1947

IN THE PRIVY COUNCIL No. 68 of 1946.

ON APPEAL

FROM THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC (APPEAL SIDE)

B E T W E E N :

LEO WILFRED VEZINA ... (Defendant) Appellant.

and

DAME ALINE TRAHAN ... (Plaintiff) Respondent.

CASE FOR THE RESPONDENT

Record

1. This is an appeal from a judgment of the Court of King's Bench for Quebec (Appeal side) dated the 30th of November, 1945 dismissing an appeal by the Appellant from a judgment of the Superior Court, District of Montreal, dated the 26th of June 1944 in favour of the Respondent, in an action by the Respondent against the Appellant, her husband, for separation from bed and board. p.216 p.36

2. The action was instituted on the 3rd of August 1942, on the grounds of assault, ill treatment, insults and failure adequately to provide for the needs of the Respondent and her four children. The Appellant on the 14th of September 1942 accepted the jurisdiction of the Court by his Defence, in which he denied the charges. p.9. p.17

3. On the 11th of September 1942, pending the action, an interlocutory judgment of Cousineau J. granted the Respondent's petition for an alimentary allowance of, inter alia $100 a week to be paid by the Appellant. p.14

4. On the 20th of December 1943 the Appellant commenced proceedings for divorce from the Respondent in Reno, Nevada, one of the United States of America, and on the 25th of January 1944 he obtained what purported to be a decree of divorce in Reno, Nevada. pp.256-257

5. In early 1944, while the action was still pending, the Appellant failed to pay the alimentary

Record. allowance, and garnishee proceedings were taken against his salaries. On the 28th of February 1944, the Appellant contested these proceedings, alleging that on
p.19 the 25th of January 1944 when the decree of divorce was pronounced he was domiciled in the United States.

p.22 6. On the 9th of March 1944 he pleaded further in the garnishee proceedings that the domicil of the parties had been established in Montreal after their marriage in 1919, but that he was no longer domiciled in the province of Quebec.

p.33 7. At the hearing of the action on the 21st of March 1944 the Appellant sought to amend his Reply referred to in paragraph 6 by withdrawing his admission that he had had his domicil in Montreal, and alleging that he had never had such a domicil.

8. The essential facts governing the Appellant's domicil are as follows: a) He was born in the United
p.124 States of America in 1894, and on the day of his marriage, the 1st of September 1919, he was domiciled in Worcester, Massachusetts.

p.126 b) He had been employed in Montreal since 1917, and within a few days of the marriage moved to Montreal. In order to give his wife protection in Montreal, the appellant entered into a contract of marriage prepared by a notary of Montreal, in which he described himself as a Commercial traveller of Montreal and described
p.262,l.2. "the future common domicile of the two parties situate
p.262,l.33 at No. 609 Querbes Avenue, Outremont, near Montreal".

c) Apart from a stay in Worcester, Massachusetts from 1924 to 1928, when the Appellant was occupied with a
p.128,l.34 business which failed, he was established in Montreal, and rose to the position of managing director of a firm called W. Clark and was later manager in Montreal of Canadian Industrial Alcohol Limited and President of
p.131 Charles Gurd and Company Limited of Montreal.

d) The matrimonial home from 1928 onwards was in
p.95 Montreal and the Appellant also owned a country house at
p.159 Isle Bizard in the Province of Quebec. The
p.162 Appellant frequently made statements that he intended
p.166 to establish a permanent home at Isle Bizard. For
p.168 taxation and revenue purposes, the Appellant was a
p.171 resident of Montreal.
p.178

e) In 1943 the Appellant, while on business in San Francisco, arranged to obtain and on the 25th of
p.259 January 1944 did in fact obtain in Reno, Nevada, what purported to be a decree of divorce. In these divorce proceedings the Appellant swore that his

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permanent domicile was in Washoe County, Nevada p.257

f) On the 10th of March, 1944, the Appellant remarried one Blondine Couture at Putnam, Connecticut. In the marriage certificate he described himself as of New Haven, Connecticut. On the 13th of March 1944 he returned to Montreal and at the time of his examination on the 22nd March 1944 was resident in Montreal. p.142.l.38 p.270.l.12

9. On the 26th of June 1944 Loranger J. gave the final judgment of the Superior Court, District of Montreal, declaring that at the time of his petition in Reno the Appellant had been domiciled in Quebec. The Appellant had acquiesced in the jurisdiction of the Superior Court by his appearance and by his defence. The Reno Divorce has been obtained in fraud of the laws of Quebec and was invalid in Quebec. As the Appellant did not give evidence to disprove the charges of cruelty he granted the Respondent a separation and an alimentary allowance of $100 a month together with $25 a month to each child. p.46.l.2 p.45.l.22 p.46

10. From this judgment the Appellant appealed to the Court of King's Bench (Appeal Side) on two grounds:-

a) That the Courts of Quebec had no jurisdiction, as the Appellant had always been domiciled in the United States.

b) That the judgment improperly granted a larger alimentary allowance than that for which the Petitioner prayed.

The Court of King's Bench reduced the alimentary allowance to the amount claimed, but rejected, (Macdougall J. dissenting) the appeal on the question of domicile, finding the domicile of the parties to have been and to be in Montreal, Quebec. p.216

11. Letourneau, C.J., said that the Respondent admitted that the domicil of the Appellant had originally been Massachusetts, but on the evidence, the Appellant had changed his domicil as defined by Article 80 of the Civil Code, to Montreal, at his marriage in 1919, and he had not since changed it again. p.218.l.1 p.218.l.11

12. St. Germain J. quoted Quebec authorities on domicil and jurisdiction in matters of personal status and capacity, and agreed that the Appellant had changed his domicil at the time of his marriage. By appearing in the action, the Appellant had accepted the competence of the tribunal. St. Germain J. then reviewed the facts which in his opinion made it clear that the Appellant was domiciled in Montreal, despite his denials in his evidence. Accordingly he held that pp.221-223 p.225.l.22 pp.226-229 pp.229-231

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p.233.l.48 the divorce decree had no legal effect prejudicial to the Respondent.

pp.236.l.14 -238.l.23 13. Pratte J. discussed first, the undisputed facts relating to the Appellant's residence, and then examined his declarations of intention. On the pp.238-240 evidence and on the authorities he came to the p.242.l.4 conclusion that in 1944 as in 1942 the Appellant was domiciled in Montreal, and therefore by Article 6 of p.242.l.10 the Civil Code he was governed in this matter by the law of Quebec. It followed that the Reno divorce had not broken the marriage tie.

p.244.l.44 14. Gagne, J. having discussed the doctrine of domicil as set out in the authorities, agreed with St Germain J. and Pratte J. that the Appellant had the p.245 intention of setting up a domicil of coice in Montreal in 1919 and 1928, and he was satisfied that at the commencement of the proceedings and at the hearing p.247.l1.3 the Appellant was domiciled in Montreal.

15. Macdougall J. in a short dissenting judgment, p.243.l.21 held, first that the burden of proving a domicil of choice in Montreal had not been discharged by the Respondent. Secondly, on the authority of Wahl v. Attorney General (1932) L.T. 382, he could not impute to p.243.l.39 the Appellant by his use of the word "domicile" in the marriage contract an intention to elect a domicil of choice. Thirdly, the Appellant had always been p.244.l.14 domiciled in Massachusetts, and as the Respondent had p.27 admitted on the 23rd of March 1944, during the hearing in the Superior Court, that the Reno divorce was valid in all the United States of America, the divorce was valid in Massachusetts and would therefore be held valid in Canada.

16. To the first finding of Macdougall J. the Respondent submits that unless it is clear that a p.95 finding of fact by a trial judge is based on a wrong p.159 principle, the Court of Appeal should be slow to p.162 reverse it. Seven witnesses testified that the p.166 Appellant had expressed the clear intention of p.168 remaining in Isle Bizard, Quebec permanently. To the p.171 second contention of Macdougall J. the Respondent p.178 submits with respect that apart from the use of the word "domicile" in the marriage contract, the Appellant clearly shows an intention in the other terms of that document to change his domicil to that of Montreal. To the third finding, the Respondent submits that the admission was made under a mistake of law. At that time the law was generally considered to be as stated in the admission, but later decisions of the Supreme Court of the United States have since shown that view to be erroneous.

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It is submitted that this dissenting judgment takes insufficient account of the weight of evidence showing a domicil in Montreal.

The Respondent respectfully submits that the judgment of the Court of King's Bench should be affirmed for the following among other

REASONS

1. BECAUSE as both Courts below have held, the Appellant was domiciled in the province of Quebec at the institution of the suit and at all material times thereafter.

2. BECAUSE the evidence, accepted by both Courts below, established that the Appellant was so domiciled.

3. BECAUSE the divorce of a person domiciled in Quebec is null and void within Canada unless obtained by an Act of the Parliament of Canada, and consequently the Appellant's alleged divorce is null and void in Canada.

4. BECAUSE the Respondent is the Appellant's wife and was and is entitled to the relief for which she asked.

5. BECAUSE the courts of Quebec had jurisdiction to grant such relief to the Respondent.

6. BECAUSE of the reasons given by Letourreau, C.J. and Lorranger, St. Germain, Pratte and Gagne JJ.

MICHAEL LEE.

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CASE FOR THE RESPONDENT

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