

WALKER *et vir*, (plaintiffs in the Court below,) Appellants; and THE CORPORATION OF SOREL, (defendants in the Court below,) Respondents.

*Held*, that where essential matter is merely imperfectly stated, and not entirely omitted, the defendant should attack the declaration by an exception *à la forme*, and not by a *défense en droit*.

MEREDITH, J. The plaintiff in the Court below brought a petitory action against the respondents, and in her declaration she describes herself as "Dame Mary Walker de la ville de Sorel, dans le district de Richelieu, épouse contractuellement séparée de biens de John George Crébassa, Ecuier, notaire public du même lieu, et le dit John George Crébassa en autant que besoin est pour autoriser sa dite épouse."

The respondent filed a *défense au fonds en droit*, and contended that the allegations of the declaration, as to the separation as to property of the plaintiff from her husband, are insufficient. The judgment of the Court below maintained the *défense en droit*, one of the *considérants* of the judgment being: "Considérant que dans la dite déclaration les demandeurs n'ont allégué et fait voir aucun droit de la demanderesse d'ester en justice et d'instituer la présente action comme séparée de biens d'avec son dit mari, n'alléguant pas la dite séparation et comment elle s'est opérée."

The rule on this subject, as I have always understood it, is this: "That matter essential entirely omitted is the subject of a *défense en droit*, but that matter essential imperfectly stated is the subject of an exception *à la forme*." (3 Rev. de Leg. p. 196.) Applying this rule to the present case, if the respondent had any reason to complain, (a point which we are not called upon to decide,) there should have been filed, not a *défense en droit*, but an exception *à la forme*; and therefore the judgment, maintaining the *défense au fonds en droit*, ought to be reversed.

Aylwin, Drummond, and Mondelet, JJ., concurred.

Judgment reversed.

D. Girouard, for Appellants; Lafrenaye & Bruneau, for Respondents.

CREBASSA, (defendant in the Court below,) Appellant; and MASSUE, (plaintiff in the Court below,) Respondent.

*Held*, that a return made by the Sheriff of *rebellion à justice* is sufficient evidence to justify the Court in making a rule against the defendant, for *contrainte par corps*, absolute, where the defendant does not appear. C. S. L. C. cap. 83, sec. 143-145.

This appeal was from an interlocutory judgment rendered in the Superior Court, 20th May, 1864, on motion of the plaintiff for a rule *nisi* for a *contrainte par corps*, and also from a final judgment rendered by the same Court, 31st May, 1864, declaring the rule absolute, with costs against the defendant, for having committed a *rebellion à justice*, on the 28th April, 1864, as appeared by the return of the sheriff of the district of Richelieu, to the writ of *pluries pluries venditioni exponas de bonis*, addressed, 31st March, 1864, to the sheriff of the district of Richelieu, wherein the defendant resided, and had opposed the sale of his goods and chattels previously seized. The judgment was appealed from on the ground of irregularity in the proceedings, and because judgment had been rendered without any proof. The respondent contended that the Ord. of 1667 had been superseded by the statutory enactments contained in C. S. L. C. cap. 83, sec. 143 to 145. The return of the sheriff in such a case as this was not traversable.

MEREDITH, J., said, it was not denied that the appellant opposed the execution. The defendant had made default, and the return of the sheriff must be considered sufficient evidence. The Court saw no reason to disturb the judgment rendered by the Superior Court.

AYLWIN, J., said, it would be impossible in this matter to proceed according to the Ord. of 1667. He was satisfied that what had been done time and again might be done in this case.

Duval, C. J., concurred.

Mondelet and Drummond, JJ., dissented.

Judgment confirmed.

D. Girouard, for Appellant; Lafrenaye & Armstrong, for Respondent.