

can be sued as long as she has not renounced.  
Judgment for plaintiff.

*Judah & Co.* for plaintiff.

*D. E. Bowie* for defendants Brooks.

*St. Pierre & Scallon* for defendant Hands.

MONTREAL, JUNE 10, 1879.

MONTREAL CITY & DISTRICT SAVINGS BANK V.  
GEDDES et al.

*Recusation—Procedure.*

In this case (May 14) the counsel for plaintiffs, at the hearing of a motion before Torrance, J., to revise a ruling of Mackay, J., at *enquête*, stated that it was the intention of the plaintiffs to recuse the honorable Judge, on the ground that his Honor had expressed an opinion on the question extra-judicially. Subsequently (May 16) the recusation was filed, and the Judge (June 3) made answer, alleging that there was no ground for it.

The following term (June 10) it was arranged that the motion to revise the ruling at *enquête* should be heard before Jetté, J. But when the argument was about to commence,

JETTE, J., inquired whether there had not been a recusation, and in what position it then stood.

WURTELE, Q.C., for the plaintiffs, replied that he considered the recusation practically at an end, as the case was being heard before a Judge other than Mr. Justice Torrance, against whom the recusation was made, and that it was his intention, in order to regularise the record, to produce a discontinuance of the recusation after the case had been argued.

JETTE, J., said the recusation must first be disposed of. Art. 184 of the Code of Procedure required that another Judge should proceed to determine whether the recusation is founded or not. It was a question which affected the administration of justice generally, and it was important that a recusation should not be made for the purpose merely of sending a case before another Judge.

After hearing counsel further on the question,

JETTE, J., decided that the recusation must either be formally withdrawn before the Judge against whom it was made, or it must be disposed of by the Judge entitled to decide it.

The recusation was formally withdrawn,  
June 16.

*Judah & Co.* for plaintiffs.

*Lunn & Co.* for defendants.

MONTREAL, JUNE 30, 1879.

OAKES et al. v. CLEMENTS.

*Pleading—Payment by a Consort separated as to property.*

JOHNSON, J. The defendant is sued for \$165.-60, which is charged as a balance for the price of fish sold. He pleads that his wife previous to her marriage with him, used to deal in fish with the plaintiffs; that they are now *séparés quant aux biens* by their contract of marriage; and the plaintiffs impute to her old account, \$90 paid on his account since his marriage. There is no evidence in the case but the defendant's, who is brought up by the plaintiffs; and instead of proving their case, he only admits the debt to the extent of some \$65, telling his story about the \$90 which has been misapplied. There is no motion to reject this evidence; and if there was, I do not see how I could reject it. He is the plaintiffs' witness, and what he says must be taken as he says it. He pleads in substance that the plaintiffs' account is wrong in not crediting him with the \$90 paid. Their answer is not that the \$90 were paid on account of the wife's debt; but only a general answer—that the plea is not true. There is no presumption in law that a payment made by one of the *conjoints séparés*—is made for the other. I never understood how a man who is brought up by the other side and sworn to tell the truth, and the whole truth, can be said to be proving his own case merely because he is unable to prove the plaintiff's case. But it may be said the defendant must prove what he avers. He avers a payment of \$90, and he says more: he says it was agreed that the matter should be set right, and that he should get credit first. Well, I will not allow justice to be defeated by a technical rule, if I can get at it, without disregarding the rule; and I can do that, I think, here by calling on the plaintiff (*d'office*) to swear whether this payment was made, and at what time; for if it was made after the marriage, it was made probably by the husband for his own account, and not for the previous account of the woman