

Virginie Juchereau Duchesnay, doing business at Montreal, under the name and firm of Cuvillier & Co., and Maurice Cuvillier, her husband, the latter being brought into the cause merely as authorizing his wife. The *tiers-saisie*, on the 10th November, 1863, declared that she owed the defendant nothing, and held no goods belonging to him. The plaintiff contested this declaration, alleging that at the time of the service of the writ of *saisie-arêt*, the *tiers-saisie* had in her possession certain moneys and effects belonging to the defendant. The *tiers-saisie* answered that the defendant was indebted to her in upwards of \$4000. Issue was joined, and the parties proceeded to proof. The plaintiff examined Maurice Cuvillier, husband of the *tiers-saisie*, and also one Philip S. Ross, an accountant, who had made an examination of Cuvillier's books. The evidence of Maurice Cuvillier was objected to by the *tiers-saisie*, on the ground that he was not a "party" to the cause, within the meaning of the Statute, being merely brought into the cause to authorize his wife; and it was also objected that he, the husband, could not be examined as a witness against his wife. These objections were overruled in the Court below, but the final judgment in the case, rendered by *Berthelot J.*, dismissed the plaintiff's contestation on the ground that the allegations were not proved, and that it had not been established that the *tiers-saisie* owed the defendant anything at the time of the service of the *saisie-arêt*. The plaintiff appealed.

Morris, for the appellant. As to the objection that Maurice Cuvillier should not have been examined, it must be observed that in this case, that gentleman acts under a power of attorney from his wife, manages the business exclusively, and is the only person who can give any information respecting her affairs. If the general rule be applied here, the plaintiff will be deprived of all the advantage which may be obtained by the examination of the party to a suit. *Qui facit per alium facit per se*: in examining the agent in this case, the plaintiff should be considered as examining the wife herself. Lastly, the husband should here be considered as a *témoin nécessaire*; as he is the only witness who can

give any information respecting the affairs of the *tiers-saisie*.

BADGLEY, J. In this case the plaintiff, a judgment creditor of one William Maume the defendant, to a considerable amount, attached by *saisie-arêt* in the hands of Cuvillier & Co., represented by the *tiers-saisie*, Dame Duchesnay, such amount as might be due, and such goods as might belong to the defendant. She made her declaration in the usual course, which the plaintiff specially contested, and upon that contestation the following facts are alleged. The *tiers-saisie* made advances in money and goods to the defendant, Maume, who in return consigned shipments of fish and oil, with the understanding that upon these transactions they were to have a joint interest in the profits. The defendant had had a private account with the *tiers-saisie*, upon which he was largely indebted, and the balance of profit upon the joint account was of course applied by Cuvillier & Co. to reduce his private balance, which was largely against him at the time of the attachment, and left no money due. As to the attachment of goods, the plaintiff has limited the contestation to 600 barrels of herrings, which he alleges the *tiers-saisie* has made away with by fraud and collusion with the defendant. This is the contestation.

The plaintiff has raised the contestation. It is for him to support and prove it, and for this purpose he brings up Maurice Cuvillier, the husband of the *tiers-saisie*, as his witness. This witness was objected to, but was admitted as competent by the Superior Court. We are of opinion that he was not a competent witness in the case. The old rule of law is in force in this country—that a husband cannot give evidence for or against his wife. The clause of our own Statute, C. S. L. C. cap. 82, sec. 14, is precise. Its object was to do away with the exceptions of the old law under the Ordinance of 1667, but in doing so, it explicitly prevents husband and wife from being witnesses for each other. The common law of the land, and that public policy which is part of the common law, preclude such examination of husband and wife. It is true that the 15th section of the same act provides for the examination of any party to the suit as a