

au dit jugement interlocutoire et plus particulièrement le jugement final du 27ème jour de mars dernier, homologuant le rapport du praticien filé dans la dite cause ont été légalement et régulièrement rendus, et que la cour inférieure avait toute l'autorité nécessaire pour recevoir le dit rapport, qui est d'ailleurs suffisant en lui-même.

Que la preuve filée au soutien d'icelui est surabondante et conclusive et que c'est avec justice que le dit rapport a été homologué par la dite cour."

On the 21st day of may 1844, the appellant moved that all the proceedings in the said cause taken by the respondent be set aside, and that the appellant by way of rebutter to the *réplique spéciale* be allowed to allege the following matters and things.

Firstly.—Because the said Plaintiff, having by her *réplique spéciale* assigned and alleged new matter which should have been set forth in the said rule thereby tendered a new issue, in which the said defendant should have been permitted to join, either by a special or general pleading as he might be advised.

Secondly.—Because the said inscription on the *rôle d'enquête* and all the subsequent proceedings were premature and irregular and against the course of practice in the said court, inasmuch as the said defendant was deprived of the opportunity and advantage of pleading a proceeding by way of answer or rebutter to the said *réplique spéciale*, and was not duly required to make and fyle such ulterior pleading or proceeding, nor was duly foreclosed from doing so.

Thirdly.—Because the issue in the said matter being imperfect in the behalf aforesaid, justice cannot be done between the said plaintiff and defendant.

The court below on the same day, it is believed, inconsiderately adjudged as follows on the said motion.

That the inscription of this cause for hearing on the merits of the rule to show cause in the said cause made and tendered—the inscription of the said rule on the *rôle d'enquête* for proof, and the rule or order of this court declaring the said enquête to be closed, and all and every the proceedings in the said cause taken since the fying by the said plaintiff of her *réplique spéciale à la réponse du défendeur*, be rescinded, set aside and held for nought and the said defendant permitted to make and fyle in the said caused within such time as the said court shall appoint a plea or proceeding by way of answer or rebutter to the said *réplique spéciale* for the reasons in said motion set forth, and further, that the said defendant do take nothing by his said motion and that the court condemn the said defendant to pay ten shillings costs.

The parties having been herd, the court below on the thirtieth of may 1844, rendered the following judgment.

La cour après avoir entendu les parties, sur la motion de la demanderesse du huit avril dernier, tendante à obtenir nomination d'un praticien, pour constater ses droits et reprises matrimoniales sur la renonciation qu'elle fera à la communauté qui a existé entre elle et le défendeur son mari, et ce en vertu du jugement en séparation intervenu en la présente cause sans égard à l'objection faite par le défendeur fondée sur convention et accords entre les parties par acte du vingt-sept avril 1833. Considérant que cette convention et accord n'a eu d'autre effet que de servir à l'exécution du dit jugement, et qu'il a été spécialement convenu au dit acte que dans le cas où le défendeur né-