

guage means only, "these things were bought for me—for my use and consumption that is,—and the plaintiff debited them to me;" but the question is still, who was, by law, the purchaser? The law says it is the husband, unless that presumption is rebutted. As to "credit having been given," that is not only a very misleading expression, but a thing to which the other party has surely something to say, before she can be bound. If I have emphasized the reason, or one of the reasons for the apparent discrepancy between different decisions, as arising in some cases from the different appreciation of facts, I am convinced that a great deal of difficulty in our courts arises from that cause; for there are facts and facts: some facts simple in their nature are of course not susceptible of being differently understood; but to take the fact that arises here—a compound fact—made up not only of the thing alleged, *i. e.* the giving credit; but comprising all the effects of that thing—the *convention*, to use the expression in *Hudon v. Marceau*; if it is only meant that the tradesman gave the credit in his books—that is surely a very different thing from saying that there was a contract between both the parties, and with their consent, that the goods were not to be chargeable to the husband.

I quite admit of course that the general principle being that the husband contracts through the wife, that must suffer exception when the wife, within the limit of her separate right, stipulates that it is not to be his debt but her own; or when the law makes her liable without stipulation for necessaries which the husband is unable to pay for. But neither of those cases is the one before us. The *convention*, if there was one, must be held to have been made for the husband. The judgment is therefore reversed.

The judgment is as follows:—

"The Court etc.

"Considering that there is error in the said judgment, doth reverse the same, and proceeding to render the judgment that ought to have been rendered in the premises;

"Considering that the action is brought to recover from the defendant Dame Marie Louise Guy, who is a married woman under coverture and separated as to property (*femme mariée sous puissance de mari et séparée de biens*), the sum of \$246.74, the price and value of merchandise

being necessary for the domestic uses of the family of said female defendant and of her husband, to which she has pleaded that she is not liable as alleged;

"Considering that as *séparée de biens* from her said husband, the said defendant is only liable for debts contracted by her within the strict limits of her rights of administering her separate property;

"Considering that the necessary supplies for the family do not come within the limits aforesaid of her exclusive and separate rights, and that unless there be evidence to rebut the presumption, the wife *séparée de biens* is by law held to have acted for and on behalf of her husband who is the head of the family;

"Considering that there is nothing in this case to rebut the said presumption of law, but the contrary appears by the evidence;

"Considering that there is nothing in the evidence to show that the husband is insolvent, or that the duty of providing for the family devolved exclusively on the wife, doth dismiss the present action with costs as well of the said Superior Court as of this Court of Review against the plaintiff *par reprise d'instance*."

T. Bertrand for plaintiff.

Barnard, Beauchamp & Creighton for defendants.

COURT OF REVIEW.

MONTREAL, December 31, 1881.

JOHNSON, MACKAY, RAINVILLE, JJ.

[From S. C., Montreal.

BENARD V. BRUNEAU et vir.

Wife—Liability for necessaries for family.

The inscription was from a judgment of the Superior Court, Montreal, March 31, 1881, (Sicotte, J.)

JOHNSON, J. In this case the liability of the wife for her own debt legally contracted is the only thing before the court. She paid for necessaries for her children—food, meat—the plaintiff being a butcher; and, of course, as her husband is admittedly insolvent, the reason of Art. 1317 C. C. applies, for it says she must bear the expense alone, if the husband has nothing, as somebody must be bound to feed the children. In this case, therefore, the judgment which condemned the wife is right, and it is confirmed.

Judgment confirmed.*

O. Augé for plaintiff.

Préfontaine & Co. for defendant.

* A similar judgment was rendered on the same day in *Claggett v. Lamer et vir*, Mackay, Rainville, Buchanan, JJ., confirming the judgment of the Superior Court, Montreal, July 8, 1881, Jetté, J.