

PROVINCE OF CANADA, } COURT OF APPEALS—MONTREAL,
 LOWER CANADA. } Friday, 10th March, 1846.

To wit:

PRESENT:

The Honorable Sir JAMES STUART, Baronet, Chief Justice of Lower Canada, President.

Mr. Justice BOWEN,

" PANET,

" BEDARD,

" GAIRDNER,

The court of appeals of our Lady the Queen now here, having seen and examined the record and proceedings in this cause, and as well the judgment appealed from as the matters by the said François-Bender the appellant for error and causes of appeal assigned, having been by the said court now here, seen and fully understood, and having heard the said appellant and the said Angelique Jacobs the said respondent by their counsel respectively, and mature deliberation on the whole being had.

Considering that by the judgment rendered in the late Court of King's Bench now the Court of Queen's Bench for the district of Montreal, on the 13th day of February 1830, a separation of property, (*une séparation de biens*), composing the community which then subsisted between the said appellant and the said respondent, his wife, was adjudged and decreed in favor of the said Angelique Jacobs upon her renouncing to the said community, which judgment was subsequently in the month of July 1831, confirmed in the court of appeals for the then province of Canada. And considering that the transaction made and executed by and between the said appellant and the said respondent, before Terroux and colleague, Public Notaries, bearing date at Montreal, 27th April 1833, had no other effect than to suspend the execution of the said judgment, but did not destroy or annul it.

Considering likewise that the said Angelique Jacobs, the respondent, having in pursuance of the said judgment and for the purpose of carrying it into execution, duly renounced to the said community which existed between her and her husband, the appellant, the same could not be legally re-established, but by *an authentic act or agreement* by and between the said parties, passed before notaries to that effect, homologated by the said court, which had pronounced the *séparations de biens*, and made public by the due enregistration thereof in the *Greffe* of the Tribunal, where such sentence had been pronounced, and considering that no such act or agreement, re-establishing the said community, was made and entered into by and between the said appellant and respondent, and that the right of the said respondent, to cause the said judgment of *séparation de biens*, to be duly executed, could only be barred, by a lapse of thirty years, and that the said judgment could not be invalidated or annulled by the effect of the aforesaid deed of