

liable to be sold in satisfaction of rent. The opposition rests on several grounds. This horse, which is of considerable value, belonged to the opposant beyond doubt. The only thing to be considered is whether it was seizable for rent. In the first place, he was a horsedealer, and was neither tenant nor sub-tenant, and therefore, under Art. 1623, the horse was exempt. Then Langlois sub-leased with the plaintiff's knowledge, and the plaintiff knew the horse was Demarais' horse, and Langlois, the hotel-keeper, owed no rent. Then, though the bailiff's return said the seizure was made on the 4th September, that return was contested, and it was shown that the seizure only took place on the 6th, after the 8 days allowed by law, and this is now *de rigueur*. Opposition maintained with costs.

Beique & Co., for opposant.

A. Desjardins, for plaintiff contesting.

BANK OF TORONTO v. PERKINS *es qual. et al.*

Wife séparée de biens—Mortgage from Husband.

MACKAY, J. The plaintiffs sue Perkins as assignee to the bankrupt estate of one Samuel S. Campbell, Lucy Jane Stevens, Campbell's wife, *séparée de biens* from him, and Brackley Shaw, and Samuel S. Campbell to authorize his wife to defend herself but not otherwise. In August, 1876, Perkins was appointed assignee to the bankruptcy of S. S. Campbell. The Bank, declaring to be mortgage creditor of S. S. Campbell, under an obligation of 19th January, 1876, by Campbell to one Bonnell, transferred to the Bank by Bonnell on the same day, brings this action to have revoked as fraudulent, null and void, an obligation and mortgage by Campbell to his wife, dated 14th June, 1875, for \$25,000, and another obligation and mortgage by Campbell to Brackley Shaw of 1st June, 1876, for \$45,000, at the passing of which Mrs. Campbell renounced her priority of *hypothèque* in favor of Shaw. This renunciation of priority of *hypothèque* by the wife it is also sought to have declared fraudulent, null and void, as being a prohibited suretyship by the wife for her husband. The Bank of Toronto is a proved creditor against Campbell's bankrupt estate, and may be admitted to be creditor of Bonnell. The Bank relies upon the Court holding that sales between husband and wife are so prohibited

by law that the mortgage gotten in June, 1875, from her husband by Mrs. Campbell must be declared a nullity; it goes farther and charges simulation, that no real consideration was had by Campbell for that mortgage; that the wife never owned interest or property to the value alleged in the mortgage deed. Upon this last point I am against the Bank, for it has been well proved that Mrs. Campbell in the course of a partnership between Charles Hagar and herself, *séparée de biens*, at the time, earned or made considerable property and money which the husband Campbell took possession of. Hagar proves it to a demonstration. On the 9th of November, 1875, Campbell declared before notary that certain errors had occurred in the description of the lots of land mortgaged to Mrs. Campbell on the 14th of June, 1875, and he corrected the errors. Here, says plaintiff's declaration, was really a new *hypothèque* never accepted by the wife, and null and void. I do not think so. It is to be noticed that all the acts and obligations referred to were duly registered. The Bank, when it took from Bonnell, could have seen all the obligations and deeds registered in the Registry Office. Mrs. Campbell before entering into the deed with Campbell taking the mortgage from him of the 14th of June, 1875, obtained the authorization of a Judge to enter into that transaction. Perkins has not seen fit to plead to the action. Mrs. Campbell pleads; so does Shaw. They, of course, deny plaintiffs' material allegations.

Upon consideration I have to pronounce against plaintiffs. The case as regards Shaw particularly is favourable to him. I do not see Mrs. C's. cession of priority of *hypothèque*, to favor Shaw, to be a nullity, or a suretyship prohibited. See 3 Quebec L. Rep. The case viewed as merely between Mrs. Campbell and the Bank is favourable to her. The Code prohibits sale between husband and wife. Yet is the rule such an iron one that a husband can keep all the money and goods of his wife, *séparée de biens* from him, and enrich himself to her ruin? Can the wife in such a case make no treaty with the husband, take no securities from him towards rectification of things? Though authorized by Judge to take a mortgage from the husband, towards securing herself, in such a case, is the