

L. H. Davidson for plaintiff.
Cruikshank & Cruikshank for defendant.

SUPERIOR COURT.

MONTREAL, December 30, 1881.

Before TORRANCE, J.

BENALLACK v. CHAPMAN.

Action against partner—Unliquidated business.

This was an action to recover \$80 alleged to have been advanced by plaintiff to defendant to buy a piece of land, and \$30 value of harness belonging to plaintiff and taken by defendant. The defendant pleaded that these items fell into a partnership then existing between them and still unliquidated, and the Court was of opinion that the plea was made out.

Action dismissed.

Cruikshank & Cruikshank for plaintiff.

L. H. Davidson for defendant.

COURT OF REVIEW.

MONTREAL, December 31, 1881.

JOHNSON, RAINVILLE, JETTE, JJ.

[From S. C., Montreal.

BROWN et al. v. GUY et vir, & PROULX, plff. par reprise d'instance.

Wife—Necessaries supplied for use of family.

The wife, sous puissance de mari et séparée de biens, in buying necessaries for the family, is presumed to act on behalf of her husband, the head of the family, and unless such presumption be rebutted in some way, as, for example, by evidence showing that the husband is insolvent and that the duty of providing for the family devolves exclusively on the wife, she will not be held liable for the cost of such necessaries.

The inscription was from a judgment rendered by the Superior Court, Montreal, July 7, 1881 (Mackay, J.)

JOHNSON, J. There are three cases now in review before us, all of them involving questions of the liability of married women for debts contracted with tradespeople. The learned Chief Justice of the Queen's Bench, in *Hudon v. Marceau* (23 L.C.J., p. 45), observed that though these questions are not in themselves difficult, yet there has been some confusion, owing to the difference of facts in the different cases, and also, I might add, under our system, owing to the different ways in which the same facts

sometimes present themselves to different minds. Accordingly we see that all the three cases before the Court now are dissimilar. In the case of *Brown v. Guy*, the question is whether a married woman *séparée de biens* can validly contract without the authority of her husband, except within the strict limits of administration of her separate estate. In the case of *Benard v. Bruneau* the question is whether, the husband being admittedly insolvent when the meat was furnished to the family by the plaintiff, who is a butcher, the wife is liable for a note she gave in payment. In the third case (*Claggett v. Lomer et vir*), in which judgment has been given, I did not sit.

Now, with regard to *Brown v. Guy*, the first thing that strikes me in this case is that, if the plaintiff had not amended his declaration, by saying that the goods furnished were necessaries for the family, he might have had a stronger case, for the language of the plea might seem to import that this lady defendant bought on her own credit. She does not, however, say that she bought under her own right of separate administration. She says the contrary. The language used is that "credit was given to her by plaintiffs, in her own name, they well knowing that she was *séparée de biens*."

This plea was filed before the plaintiff amended his declaration, and there is no denial of the fact alleged in the amendment that these things were sold for the use of the family.

The fact, then, is admitted on all hands, and there is not a word about the husband being unable to pay, but the very contrary as a matter of fact; and not only so, but there is also the express stipulation of the contract of marriage, that the husband is to supply everything—provisions for the family and apparel for his wife, etc. The Chief Justice lays down, in *Hudon v. Marceau*, that "*à défaut de convention, la femme même séparée de biens qui achète pour les besoins de la famille, est censée le faire pour et au nom du mari.*"

The only remaining consideration, then, would be as to the particular circumstances of the dealing between the wife and the tradesman. Is there anything to take it out of the rule—the presumption, that she is acting as *mandataire* of her husband? There is absolutely nothing that I can see. The language of the plea taken in the ordinary sense of lan-