

PROVINCE OF CANADA,
Lower Canada.

IN THE QUEEN'S BENCH.
APPEAL SIDE.

H. L. ROUTH,

(Plaintiff in the Court below,)

RESPONDENTS,

DENIS MAGUIRE,

(Defendant in the Court below,)

and

ANN CECILIA MAGUIRE,

(Opposant in Court below,)

APPELLANT.

CASE OF THE APPELLANT.

THE Plaintiff having obtained judgment against the Defendant, sued out execution, in virtue of which certain goods, wares and merchandize in a store in which Ann Cecilia Maguire, the opposant, carried on business as *marchande publique, séparée de biens* from her husband, Denis Maguire, the Defendant, under the name and Style of Maguire, Junior, and Company were seized. Ann Cecilia Maguire then fyled an *opposition afin d'annuler*, claiming these goods as hers, alleging herself to be *séparée de biens* from her husband, in virtue of a judgment bearing date the 5th February 1859; duly executed, and fyled a copy of this judgment with her opposition. To this the Plaintiff pleaded firstly, the general issue, and secondly, by *Perpetual Exception péremptoire en droit*, among other things, that she, the Opposant, was not *séparée de biens* from her husband, inasmuch as she had obtained the judgment *en séparation* through fraud, and for the purpose of defrauding the creditors of her said husband; and prayed to have this judgment set aside, and declared null and void. To this portion of the plea, the Opposant demurred, on the ground, that the question of her right to this judgment was *chose jugée*, and could not be pleaded in bar to her opposition. This demurrer was maintained. The parties proceeded to proof, and the Opposant proved all the allegations in her opposition, as having purchased the goods and effects seized in the cause, from various merchants and others; and the Plaintiff even gave an admission of facts, fyled in the cause, that they had been purchased by the Opposant from the different merchants whose names appear on the several accounts fyled in the cause. The Plaintiff then produced a witness by the name of Steele, who swore, that the Defendant, Denis Maguire, had told him that when his wife