

case I have spoken without any reserve of the objections to which, in my opinion, the order of my brother Mondelet is subject. Under any circumstances I think that he would wish me to do so. And I have the less hesitation in doing so in the present instance because whatever doubts may exist as to the other points of the case, there can be none in the mind of any reasonable person as to the motives of that Hon. judge in making the order impugned. He had seen in this case two grave miscarriages of justice, and his object evidently was to prevent the case from ending in a total failure of justice. Moreover, although I express and act upon my own opinion (as I am bound to do whatever may be my respect for the views of others), I do not fail to bear in mind that although the order complained of is opposed to the opinion of the majority of the Court, it nevertheless is fully approved of by my brother Aylwin, than whom there is no one more competent to judge of the matter."

The prisoner, W. W. Blossom, was subsequently admitted to bail at Montreal, according to the terms of the judgment.

Mr. Ramsay conducted the case on behalf of the Crown, and Mr. Devlin for the prisoners.

#### SUPERIOR COURT—JUDGMENTS.

Montreal, 30 Sept., 1865

BADGLEY, J.

ELLIOTT v. GRENIER *et uxor*.

**HELD**—That a wife *séparée de biens* is liable not only for the groceries used by the family, but (semble) for small sums lent to the husband, and expended by him in marketing for the family. Further, that she is liable for spirituous liquors used in the house for entertaining friends, as well as for wine and porter; but that she is not liable for a sum loaned to her husband, not used by him for subsistence. Held, also, that pleas of compensation and prescription are entirely inconsistent with an averment of never indebted.

The plaintiff in this case was a grocer in Montreal and carried on business there from 1854 up to the present time. In 1854 he began to supply Mr. Grenier and his family with groceries. This ran on from 1854 to 1859. Then the plaintiff made up his accounts and found a balance of £119 due on the groceries. For this balance he brought an action against Mr. Grenier and his wife. The wife was qualified as being *séparée de biens*, and they were both put into the case on the ground that the groceries were necessary for the subsistence of Mr. Grenier and his wife, and their family. From 1854 to about the end of 1855, they received from plaintiff a large amount of groceries, in value about £200. In the account were several small sums, amounting to only £6 or £7, advances of money made by Mr. Elliott to Mr. Grenier. Madame Grenier now said, I am liable for my groceries, but I have a very great objection to pay this £6 or £7 advanced to my husband. True, replies the plaintiff, but while the account

was running in 1855, your husband paid me £45 by a promissory note, and I apply this in payment of the monies advanced, leaving the balance due on the groceries only. This seemed reasonable enough. But beside this, it was in evidence that these small sums were got by Mr. Grenier to purchase things on the market for the support of the family. As these things went into the stomachs of the defendants, the objection must go for nothing. There was an item of £6 or £7, for a great number of small things which during the course of 5 years amounted to that sum, and which the defendants had very industriously collected out of the general account extending over ten or twelve pages. These items, said Madame Grenier, were not got for the family, and, therefore, she was not liable. Now the evidence showed that these things, such as a half-pound of cheese, crackers, &c., were got by Mr. Grenier for the subsistence of himself and family, as he called at plaintiff's store for them on his way to town, &c. There was, however, a large item of £65, for brandy, whiskey, gin, &c., for which Madame Grenier said she was not liable because she did not drink them. But it appeared that she had obtained a quantity of wine to put into her sauces, which corresponded with the amount charged in the account; that a box of brandy was also brought in from the plaintiff's, and that the remaining whiskey and gin were used in the house for entertaining friends. £65 objected to was a specific objection against spirituous liquors, but included in this was about £8 for a quantity of porter, which article was not objected to under the spirituous liquor denomination, and came under the head of subsistence. Besides it was only now at the last moment that all these objections were made. It was proved that Mr. Grenier frequently when passing the plaintiff's shop got a bottle of brandy, which he put into his pocket to take home for the subsistence of himself and family. The remaining part of the account was not objected to. The difficulty seemed to arise out of the credit side of the account. In 1854, Madame Grenier rented to the plaintiff a shop—the shop from which these things were obtained—at £75 a year, and there was an understanding that the rent was to go in payment of the grocery account. In Sept. 1856, before the expiration of two years, she gave the plaintiff a receipt in full for two years' rent (£150), and this money was at once applied in payment of the account. But there was a sum of £50 lent by the plaintiff to Grenier who handed it over to the firm of Murphy & Grenier, this latter being the defendant's son, and living with them during the running of the account. Clearly, this £50 loaned was not subsistence, and Mad. Grenier could not be compelled to pay this amount. Judgment would, therefore, go for the amount claimed, less this £50; but there would be a reservation in plaintiff's favor against Mr. Grenier for this sum.

The pleadings in the case, it must be remarked, were very irregular and contradictory. There was a general denegation denying that the defendants ever got any of the things, and