

costs only. The action was by a wife *en séparation de corps et de biens*. After considerable litigation, a notarial agreement was entered into between the parties, by which the case was settled, the plaintiff agreeing to discontinue without costs. The Court below held that the appellant procured the signature of his wife to the deed of settlement in order to defraud her attorneys of their costs, and the action was declared to be terminated and at an end, on payment of these costs. From this judgment the present appeal had been taken. A great many cases had been cited by the respondent, where the plaintiffs' attorneys had continued a case for costs. The view adopted by the Court on this subject was that where a settlement was made by the parties in good faith, the plaintiffs' attorneys could not continue the case for their costs. But if there was bad faith, and a settlement was made evidently for the purpose of depriving a lawyer of his costs, the Court might order that the discontinuance should be made on payment of the costs. There could be no doubt in this case, that the stipulation that each party was to pay his own costs, was put into the deed for the purpose of depriving the wife's attorneys of their costs, because the action was well-founded, and the defendant, who was a man of considerable wealth, had agreed to pay his wife an allowance. The judgment would, therefore, be confirmed; first, because the appeal was only on a question of costs; and secondly, because the attorneys of the respondent could not be deprived of their costs by an arrangement like this. A few words, however, would be added to the judgment, so as to give costs to the respondent's attorneys only from the time they were substituted in the cause.

RAMSAY, J. The judgment is based on Art. 450 C.C.P. Whatever be its merits that article evidently has no bearing on the question. It is an article simply setting forth that a party may discontinue his action before judgment on payment of costs without the consent of his adversary. The case before us is that of both parties discontinuing the proceedings without costs, by consent. The one is a faculty accorded to the plaintiff on a certain condition, the other is the exercise of a common right. Now the question that is presented to us is this: Can a plaintiff, represented by an attorney who has prayed for distraction of costs, abandon

his suit in such a way as to defeat the attorney of a possible recourse he might have against the defendant, and can the Judge condemn one of the parties, on the demand of the attorney, to pay the costs?

The question is one of some difficulty. It is apparent that an understanding of this sort might be come to between the parties purely with the view of defeating the attorney on one side of his costs, as appears to have been intended in this case. On the other hand, it is difficult to see how the Court can adjudicate on an unfinished case as to the party on whom the liability to pay costs should fall, nor do I see that there is any necessity to admit a proceeding so open to objection. By article 205 C.C.P., no one can revoke the powers of his attorney without paying him his fees and disbursements, and therefore there can be no discontinuance in the suit without the attorney's privity and consent. The case of *Ryan & Ward* was before the code, and when the rule of art. 205 was only a rule of practice. Of course, the general principle, that without fraud the parties may settle without their attorney, is unquestioned. This appears to me a sufficient check for all practical purposes, and I think the judgment below should have gone to the extent of refusing to file the discontinuance without condemning the appellant to costs.

And so it was decided in *Lafaille & Lafaille*, in *Quebec Bank & Paquet*, and in *Castongue & Perrin*, that the attorney could not continue the case for his costs after discontinuation of the suit. The dissent in *Ryan & Ward* takes exactly the ground which I think the judgment in the Court below should have taken.

By the form of the judgment it seems not to go further than to permit the discontinuance on payment of plaintiff's costs, and this would be in my view a correct judgment. I therefore do not dissent from the dispositive of the judgment, but from the motives.

MONK, J., thought that in these questions of costs it was very difficult to lay down a general rule, and it was still more difficult in cases that had been discontinued, like the present one. The parties had settled, but the Court said, "There is a third party—the attorney—who has demanded distraction from the Court. You may discontinue on paying the costs due to him."