## SUPERIOR COURT.

MONTREAL, June 30, 1880.

HOMIER v. RENAUD, & MORIN, oppt.

*Married Woman—Renunciation by Wife séparée de biens of hypothec on husband's immoveables.*

*A wife separated as to property may validly renounce in favor of a creditor of her husband any hypothecary claim whatever on her husband's immoveables.*

The opposant, *séparée de biens* from the defendant, her husband, filed an opposition *à fin de charge* for a *rente* of $200 per annum settled upon her by marriage contract, with hypothec on an immoveable belonging to her husband seized in the cause.

The plaintiff contested the opposition on the ground that the wife had ceded to him priority of hypothec by the obligation which was the basis of the suit. The opposant answered that this was equivalent to a suretyship in favor of her husband, and consequently contrary to law, and null and void.

JETTE, J., said that in the case of *Hogue & Cousineau & La Société de Construction Montarville*,* he had held that the wife, notwithstanding the terms of C. C. 1444, may renounce, in favor of her husband's creditor, not only to her dower, but to any hypothecary claims whatever which she may have on her husband's immoveables. The fact that in the present instance the wife was *séparée de biens* did not affect the case, because the wife, in so renouncing, was not binding herself. A wife may pay the debt of her husband, but she cannot borrow money to do so;—*Buckley & Brunelle*, 21 L. C. Jurist, p. 133.

The judgment is as follows:—

"La Cour, etc.,

"Considérant que l'opposante demande par son opposition à fin de charge que l'immeuble saisi sur le défendeur, son mari, ne soit vendu qu'à la charge d'une rente de $200, et d'un droit d'habitation, à elle assurées par son contrat de mariage en date du 16 Octobre, 1864, avec hypothèque sur le dit immeuble;

"Considérant néanmoins que par l'acte d'obligation sur lequel repose la créance du demandeur, la dite opposante a cédé pour le paiement de la dite créance priorité sur l'hypothèque lui garantissant les droits sus énoncés;

"Considérant que cette renonciation est parfaitement valable et légale, et ne constitue pas une obligation de la femme en faveur de son mari;

"Maintient la contestation faite par le demandeur de la dite opposition, et renvoie la dite opposition avec dépens distraits," &c.

Opposition dismissed.

*F. L. Sarrasin* for opposant.

*Archambault & David* for plaintiff contesting.

* 2 Legal News, 308: 3 Legal News, 329; 23 L.C.J., 276.

## SUPERIOR COURT.

DISTRICT OF BEDFORD, Feb. 15, 1864.

J. S. MCCORD, J.

LAPLANTE v. LAPLANTE.

*Attorney—Settlement—Costs.*

*When plaintiff's attorney has by the conclusions of his declaration demanded distraction of costs, and plaintiff's demand is substantially proved, a settlement between the parties, without the attorney's consent, by which a sum of money is paid by defendant to plaintiff, and the latter abandons his action, does not deprive plaintiff's attorney of his right to obtain judgment for costs against the defendant.*

Action by a father, about 80 years old and utterly destitute, for an alimentary pension, against his son, a well-to-do farmer of Sutton. Defendant pleaded to the action and fought it vigorously. After it had been pending for over a year, plaintiff's *enquête* having been closed and defendant's *enquête* proceeding, defendant's attorney filed a written settlement of the case, signed by plaintiff and defendant (in the absence and without the knowledge of plaintiff's attorney), whereby, for the consideration of $300 received by plaintiff from defendant, the action was abandoned and declared settled, *each party paying his own costs.*

Plaintiff's attorney insisted that the defendant should be condemned to pay costs of suit in full to him because:—1st. The declaration concluded as usual for distraction of costs in his favour; 2nd. The plaintiff would never have found an advocate to take his case, although a good one, if there had been no expectation of eventually getting costs from defendant; 3rd. The plaintiff's pretensions were abundantly proved by the evidence of record; 4th. This settlement at the eleventh hour, when defendant saw that he was going to be beaten, was