

to prohibit the wife freeing her dower, even as regards herself. This consideration is the motive for the limitation in article 1443 C. C. The Commissioners say in their Fifth Report, p. 240 :—

“The first part of this article amounts to a declaration that the husband cannot sell, alienate nor hypothecate the immovable subject to dower: such is the ancient law; but the article goes further and declares that the mere consent of the wife does not, in any way, affect her right nor that of the children, unless she have made the express renunciation sanctioned by the following article. Formerly, if the wife made an alienation together with her husband, she did not bind the children, but she obligated herself; so much so that, being the warrantor of the purchaser, she could not disturb him in his enjoyment; by this means she lost the usufruct, but upon her death the children entered into possession of the property, notwithstanding the alienation by their mother, unless they became her heirs. In this respect, the ancient jurisprudence has been changed; the obligation of warranty, contracted by the wife who alienates jointly with her husband, is void and ineffectual, since our legislature has declared (by Ch. 37, C. S. L. C. sec. 52) that the wife cannot obligate herself for her husband, otherwise than in the quality of common as to property. The warranty which she contracts, in the case presented, is therefore null, and for this reason the article declares that the alienation of an immovable subject to dower, which is effected either with or without the consent of the wife, even with the authorization of her husband, is without effect, not only as regards the children, but also as regards the wife herself; saving the exception contained in the following article.”

We have then not only the text of the law but its meaning most authoritatively defined. The wife can no longer bind herself to give up her dower so as to advantage her husband by allowing him to sell or charge his immovable subject to dower, but that excludes the idea that she cannot abandon her dower for a consideration. It would be to carry the fear of the wife allowing her property to be sacrificed for her husband to an extreme to say that the wife should be declared to be incompetent to better her position, by abandoning her right to dower

over a particular property for a consideration as in the present case. Again, it would be to give the wife right to dower twice to say that where the wife alienated for a *bona fide* consideration the deed was to have no effect. The code does not say it, and we should be contravening the sense of the article if we were to give it such an interpretation, and, moreover, we should be violating the most evident of the rules of justice that no one shall enrich himself at the expense of another. Of course Mrs. Cuvillier could not affect her daughter's rights by any renunciation but that made in accordance with article 1444, but Mrs. Fraser has no claim to the property till her mother's death. I think, therefore, that the judgment of the Court below should be confirmed with costs, altering the motive slightly so as to express that the deed in London was not an absolute renunciation to dower permitted by the law since the Registration Ordinance, and I would dismiss this appeal with costs.

Sir A. A. DORION, C. J., delivered judgment in the same sense, reviewing the modifications and changes effected in the law regulating dower, and the power of the wife to renounce her right. The omission of the particular property on Sherbrooke Street was obviously a mere error in the deed, and there was no evidence that Miss Symes was ever aware of this error, or acquiesced in the omission. His Honor arrived at the conclusion that Madame Cuvillier had renounced her dower, and whether that renunciation had the effect of barring the daughter's claim or not, the latter had no right of action until the death of her mother.

The judgment of the Court below was confirmed unanimously, the *considérants* being modified in the following particulars. The paragraph commencing “*Considérant que le douaire coutumier est soumis à la règle des statuts réels,*” was changed to: “*Considérant que le douaire coutumier est, d'après l'art. 1442 C. C., soumis à la règle des statuts réels,*” &c. And the concluding portion of the judgment from the paragraph commencing “*Considérant que parmi les lots décrits dans la susdite procuration,*” &c., was struck out, and the following was substituted:

“*Considérant que parmi les lots décrits dans la susdite procuration le lot possédé par la défenderesse ne se trouve pas compris; mais con-*