(1) After an elaborate argument the majority of the Court laid down the same rule as in *Boudria & McLean*. This case was decided in 1871.

In 1879 Mr. Justice Jetté held that the wife might "legally renounce her priority of *hypothèque* for her *reprises matrimoniales* in favour of a third party lending to her husband on the security of his real estate. (2)

And in 1880 the same learned judge held "*Qu'une cession par la femme de sa priorité d'hypothèque sur les biens de son mari, en faveur du créancier de son mari, est légale, et ne constitue pas une obligation de la femme en faveur de son mari.*"—*Homier & Renaud.* (3)

This Court has also held the same thing, I think, on more than one occasion.

We have therefore to examine what Zoé Ouellet did by the deed of 1870 to which she became a party. Did she contract for herself or did she contract for him? After setting up all the arrangement between Joseph and Polydore Langlais we have this clause:

"*A ce faire est intervenue Dame Zoé Ouellet, épouse du dit Jos. Langlais, et de lui dument autorisé à l'effet des présentes; laquelle après avoir eu communication et lecture par le notaire soussigné de la présente vente, a dit la bien comprendre et veut et entend qu'elle ait son plein et entier effet et qu'elle soit suivie et exécutée suivant sa forme et teneur, et de plus elle a renoncé et renonce en faveur du dit acquéreur ses héritiers et ayans droits, ce accepté par le dit acquéreur, tant pour elle que pour ses enfants, à tout douaire et à tous droits et prétentions qu'elle peut avoir sur le dit immeuble en vertu de quelque titre que ce soit, et notamment à l'usufruit de la propriété sus-vendue à elle réservée par le dit acte de donation.*"

Now, where is the suretyship—the obligation for her husband—in this deed? It is a renunciation to certain rights she possessed. Whatever her motive might be she was acting for herself exactly as the mother was acting for herself when she gave the tutor security against *trouble*, if wrongly he neglected to sell the minors' heritage.

It is said that all this transaction was not only null but a fraud on the rights of the *nus-propriétaires*. The first part of this we have endeavored to explain, with the latter we have nothing to do. Respondent's rights as a *nu-propriétaire* are not now before us.

We are therefore to reverse and dismiss the respondent's action with costs of both courts.

Judgment reversed.

(1) 2 Q. L. R. 163.
(2) 23 L. C. J. 276.
(3) 24 L. C. J. 253.

CIRCUIT COURT.

MONTREAL, March 11, 1886.

Coram TORRANCE, J.

DEGUIRE et al. v. BASTIEN, and WILFRED BASTIEN, *témoin saisissant*, and DEGUIRE et al., contesting seizure.

Witness—Minor—Fees of Witness paid to Attorney—C.C.P. 281.

A minor summoned as a witness is entitled to take execution for his taxed fees. But where the amount of such fees has already been paid to the attorney of the party obtaining the judgment, as part of his taxed bill, a seizure by the witness for the same amount is illegal.

This was the merits of an opposition by the plaintiffs against an execution taken out by the witness Wilfred Bastien, to recover his tax as a witness in the cause under C. C. P. 281.

The amount claimed was $3.10. The plaintiffs whose goods were seized alleged the nullity of the seizure, *inter alia*, 1st. because Wilfred Bastien was a minor; 2nd. because M. Turgeon, the attorney for the party obtaining the judgment, had already received the tax from the opposants.

The COURT held that it being proved that the amount had already been included in Mr. Turgeon's bill of costs and paid to him as attorney of the party obtaining the judgment, the seizure was illegal: C. C. P. 281. It was proved that the witness was a minor of 20, but the Court held that this objection could not prevent him from levying what was allowed to him as his expenses in obeying the subpœna.

Opposition maintained on the ground of payment to attorney previously made after being included in his taxed bill.

Beaudin, for Opposants.

Lafortune, for witness Wilfred Bastien.