

MACKAY, J. This is an action for *séparation de corps* for ill treatment, desertion, communicating venereal disease to plaintiff, &c. The judgment has dismissed the action with costs. It has found much of the plaintiff's case unproved, the plaintiff guilty of much *légèreté*, &c., and the *mal vénérien* charge not proved. We are of opinion to reverse. The communication of venereal disease to plaintiff by defendant is proved, and that is enough to entitle the plaintiff to a judgment. From that and the course of defendant, and from what has occurred between the parties before and during the litigation between them, we are unanimously of opinion that the plaintiff is entitled to obtain the sentence of separation that she asks. The course of the defendant at enquête also calls for observation—particularly his examination of the witness Madore. Defendant asked this witness whether he has not had illicit intercourse with the plaintiff. The Court may apply 4 Demolombe du Mariage, p. 526. This authority advises to separate under such circumstances.

"Le mari et la femme sont, chacun de son côté, adultères; ou bien ils se prodiguent réciproquement toutes sortes d'injures, d'exécès et de sévices... Voilà notre fait... Eh, bien! je dis que, non-seulement les textes, comme je crois l'avoir établi, commandent de prononcer la séparation, mais qu'ainsi le veulent encore les principes et les plus hautes considérations de morale et d'intérêt public. Qu'est-ce donc que la séparation de corps? C'est en méconnaître, selon moi, le caractère, que de n'y voir qu'une réparation (Vazeille, t. II, No. 574), ou un refuge au conjoint opprimé qui mérite la protection de la justice (Massol, p. 85, No. 13). La séparation de corps sans doute se propose l'intérêt des époux, l'intérêt principalement de l'époux opprimé, j'en conviens; mais c'est aussi, ne l'oublions pas! une institution d'ordre public, qui se propose le bon ordre des familles, le bon ordre de la société. Et les deux époux, fussent-ils également coupables, également odieux, il n'en faudra pas moins prononcer la séparation, si vous reconnaissez que la vie commune n'est pour eux qu'un enfer, et pour la société qu'un scandale. Oui, certes, il y a là un grand intérêt public! car nous devons tout craindre de ces situations, lorsqu'elles nous révèlent d'irréconciliables haines."

If the plaintiff's case were less clear, that

authority would lead us to separate these parties; but, as said before, the plaintiff's case is clear enough.

The judgment was entered up as follows:—

"Considering that although some of the plaintiff's allegations of declaration are not, others, and material ones, are proved;

"Considering, for instance, that it is well proved that the defendant did communicate to the plaintiff "*une maladie vénérienne*," as is charged;

"Considering, from what has passed between the parties, and what is proved, that it is plain that *vie commune* between them is now impracticable, and that "*les plus hautes considérations de morale et d'intérêt public commandent de prononcer la séparation* ;—(4, Demolombe.)

"Considering that in the judgment complained against by the plaintiff to the contrary there is error;" &c.,

Judgment reversed, and judgment of separation pronounced, as per conclusions of plaintiff's declaration, with costs to plaintiff against defendant in the Court below, and in this Court.

M. A. Adam for plaintiff.

St. Pierre & Scanlan for defendant.

#### COURT OF REVIEW.

MONTREAL, Dec. 24, 1881.

JOHNSON, RAINVILLE, JETTÉ, J. J.

[From S. C., Montreal.

THE SUN MUTUAL LIFE INS. CO. V. BELAND.

*Policy of life insurance—Alleged Error—Parol Evidence.*

The judgment complained of was rendered by the Superior Court, Montreal, Torrance, J., July 8, 1881, in favor of the plaintiffs. The learned judge in the Court below made the following observations:—

"The plaintiff's action is to recover the amount of a promissory note for \$160. It was the defendant's first year's premium on an insurance on his life for \$5,000, payable at death, and the premiums were payable during 20 years if life lasted so long. The defendant's pretension is that he agreed for a policy payable at death or in 20 years. It is a question of evidence. On one side there are witnesses who are positive that the contract with the company was for a policy payable at death or in twenty years. On