désaveu contend that the action of disavowal is unfounded: 1st. Because they had a right to continue the action for their costs against the defendant. 2nd. Because the only proceeding which the plaintiff could take against her attorneys was to revoke their mandate conformably to C. C. P. 205, namely, by paying their costs. On the other hand, the plaintiff has invoked C. C. 196, by which a reconciliation between husband and wife has the effect of extinguishing the action. The Court took this view, and, regarding the reconciliation with the utmost favor, it is impossible for us to take a different view from the Court whose judgment is under review.

Duhamel & Co., for plaintiff *en désaveu.*

St. Pierre & Co., defendants *en désaveu.*

MACKAY, TORRANCE, PAPINEAU, JJ.

[From S. C. Bedford.

PRIME v. PERKINS et al.

Second distress under one execution.

MACKAY, J. Prime brought an action to have a second distress set aside. It was in the nature of a revendicatory process. His Honor observed that no value had been assigned to the effects, and in a revendicatory action, it was absolutely necessary to give a value to show jurisdiction. The Superior Court had only jurisdiction in cases which were not exclusively of Circuit Court jurisdiction. As to the other point, his Honor entirely adopted the argument on behalf of plaintiff, that a second distress was null.

PAPINEAU, J. The plaintiff had been condemned by the District Magistrate to pay the defendant, Perkins, collector of Inland Revenue, $75 fine and $28.85 costs, for having sold spirituous liquors without license. A warrant having been issued, the bailiff who was charged with the execution, seized a horse, harness and waggon, which, being sold, produced only $12.06, leaving only $5.41, after deduction of the costs, $6.65; so that $99.44 remained to be levied. Without making any return of his proceedings on the first seizure, he made a second. The plaintiff, a physician, took an action of revendication, alleging that the effects seized were his property, and that the defendants, (the collector and the guardian) illegally detained them. Defendants pleaded in substance that the first seizure not having realized the required amount, a second seizure had been made. The sale under this seizure had been prevented by the *saisie-revendication*, which was dismissed by the Court below (Dunkin, J.) The question was as to the validity of the second distress. In England, the principle had always been maintained that the guilty person cannot be made to suffer twice for the same offence. This doctrine was not unknown to the French law, and it was well settled in Canada. The defendants referred to the case, provided for by our law, for making a seizure in another district, when the first seizure does not yield sufficient, and on the same principle it was urged, a second distress in the same district, should be sanctioned. This was using the same warrant for two distresses, but there was only one execution, and it was not making a party suffer twice for the same offence. His Honor cited 1st Burrow's reports, p. 579, *Hutchins* v. *Chambers et al.*, in which Lord Mansfield expressed himself as follows:—"As to the second distress, the first question relating to that is whether this warrant can be at all justified, as it was a second distress taken under the same warrant, when enough might have been taken at first, if the distrainer had then thought proper? Now, a man who has an entire duty, shall not split the entire sum, and distrain for part of it at one time, and for other part of it at another time; and so *toties quoties*, for several times; for that is great oppression. But if a man seizes for the whole sum that is due to him, and only mistakes the value of the goods seized, (which may be of very uncertain or imaginary value, as pictures, jewels, race horses, &c.,) there is no reason why he should not afterwards complete his execution by making a further seizure." The majority of the Court came to the conclusion that Judge Dunkin had properly maintained the second distress. However, this judgment was not to be taken as a justification of the conduct of the officer charged with the execution. It was his duty to have seized sufficient at once, to dispense with the necessity for any further seizure.

TORRANCE, J., concurred.

Judgment confirmed.

S. W. Foster for plaintiff.

Racicot & Co., for defendants.