

lightly of their rights? In the case of married women, when and how shall they make available this recourse against their husbands? Is it during marriage or after the death of the husband, or a separation between the husband and wife? And if the husband possess no property of his own, or if he become or die insolvent? The author, when on this track, ought to have gone a step farther and said that no person could be named Tutor, Subrogate Tutor or Curator, or member of an *assemblée de parents* and friends without having previously proved his solvency; and that a man should not contract marriage unless he proved that he had, and gave security that he would always possess sufficient property to be answerable for any damages which might result from his neglect to register his contract of marriage? It is true that by a following section the Ordinance allows that this registration may be made, in default of the persons above named, by the wives, by the minors themselves. Why has he not also added by Lunatics; for, indeed, if their curators or relations and friends neglect to conform to the provision of the Ordinance, who will protect the interests of these unfortunate beings? An omission again; doubtless this last provision would be absurd, but it results, nevertheless, from the principle laid down by the author. This section is still less rational than the preceding one. Who will tell the married woman or the minor that this registration must be made without delay? Who will tell them that the law allows them to do it themselves? Who? It will not be the husbands, the tutors and the curators, who have an interest in this registration not being made; it will not be the relations and friends ignorant of the existence of this law; but who then shall inform them of this provision so important to them? The Ordinance doubtless. The author has imagined that every wife in her *boudoir*, every minor among his playthings, would have a copy of his Ordinance, or that it would find its place among the wedding presents of the bride, in the whippet of the young boy, or should be part of the doll's wardrobe of every little girl.

The Civil Code of France permits the relations and friends to make the entry on the property of the tutor or curator; and if they will not make it, this entry is required to be made by the Attorney General. And in all cases the married woman, minors and interdicts are not punished by the loss of their rights from a negligence which they could not reasonably either foresee or prevent.

Sec. XXV. On the recourse allowed by this clause against the tutor, subrogate tutor, fathers and mothers of minors contracting marriage, we may make the same remark as we have made on the preceding clause.

Sec. XXIX. This clause enacts that the legal hypothec shall, for the future, only take place and subsist, 1st. in favor of married women on the property of their husbands; 2nd. in favor of minors and interdicts on the property of their tutors and curators; 3rd. in favor of the Crown. By the Civil Code from which this provision, although garbled, has been borrowed, this legal hypothec of women and minors exists independently of all entry. By the Ordinance, on the contrary, if this entry has not been made, the hypothec ceases to exist in regard to third parties, and cannot in any case become the subject of an action; or, in other terms, the Ordinance destroys in one section the privilege which it grants in another. But let us examine a little more in detail the effect of the legal hypothec granted to the wife by the Ordinance. The 2135 Article of the Code from which this section is extracted, says,

"As to the interests of women by reason of their dowries and marriage settlements in the immovable property of their husbands, and counting from the day of the marriage, the wife has no hypothec for the dotals sums which issue from successions fallen in to her or from donations made to her during the marriage, except in counting from the opening of the successions or from the day on which the donations have taken effect. She has no hypothec for the repayment of debts which she has contracted with her husband, and for the replacing of her own individual ones, except in counting from the day of the obligation or the sale."

Let us see how the author of this Ordinance has garbled this article of the Code.

"From the day on which this Ordinance shall have force and effect, the married woman shall only have a legal hypothec on the property of her husband, to secure the recovery or payment of all dowry, claim and demand she may be entitled to prefer against her husband, arising from succession or inheritance which may become due or accrue to such married woman, and of all donations to her made during her marriage; which hypothec shall date from the respective periods at which the said succession shall occur, or from the execution of such donation."

As it is easy to see, these two texts differ immensely in their effect. By the first, the wife has a legal and privileged hypothec on the property of her husband, not only for the recovery of her dowry, but even for the execution of the marriage settlements made in her favour by the husband, for the repayment of the debts to which she has become a party and for the replacing of her own individual ones.

The Ordinance, on the contrary, limits this hypothec to the restitution of the dowry and of the claims of the wife against her husband on account of succession or donation accrued during the marriage. By the Civil Law of the country, the wife has all the rights upon the property of her husband allowed to her by the 2135 Article of the Civil Code, which is only a repetition, on this head, of the old French Law which governs us. This Ordinance as we have already remarked, is only an exception to the Civil Law of Lower Canada.

A woman has contracted marriage since 31st December 1841, the period when the Ordinance came into operation; the contract of marriage contains certain rights by the husband conferred on the wife, the clauses of indemnity from debts, restitution of her own, &c. &c. According to the common law of the country, will this wife have a legal hypothec on the property of her husband for her marriage settlement, indemnity from debts and the restitution of her own? or, will this hypothec be restricted to cases particularised and defined by the Ordinance? In a word will the exceptional Ordinance have the effect of annulling on this head, the common law; or, the exception making no mention of marriage settlements, of indemnity from debts and the restitution of the individual property of the wife, will the common law be the only rule for decision in this case? This is a question which interests in the highest degree wives and mothers. The courts of justice will decide it.

We shall read, doubtless with pleasure, the opinion of Mr. Troplong on the effect of the legal hypothec preserved by the Civil Code to married women and