

band, for debts or obligations entered into by her husband before their marriage, or which may be entered into by her husband during their marriage; and all suretyships by any married woman, in violation of this enactment, shall be absolutely null."

Section 36 of the ordinance was a profound innovation on the old law, which simply forbade the *conjoints par mariage, constant icelui de s'avantager l'un ou l'autre par donation entre vifs, par testament ou ordonnance de dernière volonté ni autrement, directement ni indirectement en quelque manière que ce soit, sinon par don mutuel, et tel que dessus.*—C. de P., Art. 282. The Imperial Act 14 Geo. III., c. 83, and its complement the 41 Geo. III., c. 4, relaxed the rule of the custom in one respect, and now the ordinance, in another respect, intensified it. The statutes allowed the husband or wife to dispose of the whole of his or her property to the other by will, while by the ordinance, as has been seen, the wife could not consent to become security or responsible, or incur any liability whatever, in any other capacity or otherwise, than as *commune en biens* for the debts, contracts or obligations which may have been contracted or entered into by her husband before their marriage, or which may by her said husband be contracted or entered into at any time during the continuance of any such marriage, and contracts in violation of this enactment, are declared to be null and void.

The extent of the innovation of the old law was at once questioned both in the courts and by legal critics.

Mr. Lafontaine noted the innovation thus, in his *sommaire* 204 (p. 105) "*La femme ne peut plus se rendre caution de son mari, si ce n'est en qualité de commune en biens, sous peine de nullité.*" It will be seen that the scope of the section 36, noticed so early as 1842, was that which has become settled by jurisprudence.

In 1847 Mr. Lacoste read a paper, before an association of legal friends, on the 36th section of the ordinance of 1841. The learned commentator, when treating of what the wife could do with and for her husband, followed the doctrine of Ulpian on the *Senatus-Consult Velleianus*. That law regularly comes to the relief, says Pothier, "of a married woman

in all obligations," whether the contract be personal or real. Pandects by Breard Neuville, Vol. 6, p. 230. Starting from this principle, Mr. Lacoste says (p. 131):—"L'ordonnance annule toutes les obligations qu'une femme peut contracter pour les engagements pris par son mari tant personnelles que réelles." And on page 133, he puts the counter proposition, "L'ordonnance ne défend à la femme que le cautionnement des dettes, des engagements, contractés par le mari de cette dernière; elle lui défend de s'obliger pour lui, de se rendre responsable de ses obligations autrement que comme commune en biens; pas d'autre chose." . . . En conséquence elle peut payer pour son mari, car ce n'est pas là s'obliger pour lui, puisqu'elle ne contracte aucune obligation en ce cas. . . . L'ordonnance vient au secours de la femme qui s'engage, ou engage ses biens, et non de celle qui aliène."

There are texts in the Digest which appear at first sight to be somewhat at variance with the opinion just cited. It will, however, be observed, that the Digest, as also Pothier, in his notes, treats of the intercession of the wife. "*Intercedere,*" says M. Ortolan 2, 242, "*c'est s'obliger volontairement pour la dette d'un autre, soit de manière à le libérer immédiatement, soit en restant obligé avec lui et pour lui.*" Keeping this definition in view it becomes clear that the alienation must not partake of the character of a pledge in any sense whatever. "Hence Julian rightly says, that a woman may always revendicate the real estate she gave as security for another, although the creditor may have sold it." B. Neuville, 6, 232.

Cujas also says that the S. C. only prohibits suretyship by a woman (4, c. 239, C.D.) *S. C. Vellejanum est tantum de intercessionibus mulierum improbandis*. The case was this—the prætor authorized the tutor to sell the real estate of a minor. The mother prevailed on the tutor not to sell, promising him indemnity, should he be troubled for maladministration. The minor, come of age, attacked the tutor, and he claimed the *garantie* of the mother. Papin. *non putat cum intercessisse*. She entered into no obligation, new or old, for another. She made this obligation for herself.