

that the Attorney-General has taken security to that effect.

*Doutre & Co.* for the plaintiff.

*Abbott & Co.* for the defendants.

LACHAPELLE v. BEAUDOUIN.

*Action for Aliments—Toit Conjugal—When Wife may refuse to live with Husband.*

A wife who has grounds for demanding *séparation de corps* from her husband and an alimentary allowance, may claim an allowance without asking for separation.

The *toit conjugal* is where the husband resides; but if the husband keeps a concubine in the house, the wife is justified in refusing the offer of a home with him.

JOHNSON, J. This is the case of a married woman *commune en biens* with her husband, who still lives in Montreal, but who, as she says, has left the "*toit conjugal*," and she sues him simply for the support of herself and their child. This leaving what she calls the "*toit conjugal*" and going to live in another house is all that constitutes her ground of action. His defence is that she compelled him by her illtreatment of him and his two children by a former marriage, to go and live elsewhere, and that she keeps the household goods, while he is obliged to find support for the two children and himself, and he nevertheless offers to receive her where he resides. The answer of the wife is one of recrimination, and very serious recrimination. She says he is living with another woman who has taken her place. Now, the first thing I have to observe in this case, is that this is a court of law. It is not a place where parties in any suit, and much less where a husband and his wife, can be permitted to come merely for the sake of saying to each other disagreeable things. We must have distinct notions of what the legal obligations of these two persons to one another really are; we must see a plain principle upon which we are asked to exercise our authority; and nothing precise, no point, no rule, has been distinctly urged by the counsel on either side. I must say I always thought that what this poor woman or her adviser calls the *toit conjugal*, was the husband's roof there he could make her reside; not her roof where she could make him reside. His leaving one spot, and moving to another, might have the effect of making her follow him; but I never heard that it meant he

was to come back again at her bidding. In one word, the obligation of the husband is to receive her and supply her with all the necessities of life, according to their means and condition. This is the text, the very words of the Code (see article 175). More than that, by the same article, "she is obliged to live with her husband, and follow him wherever he thinks fit to reside." Therefore, unless there has been a refusal on his part to do so, she has no action. It must be observed that here she is not asking for a separation, which, no doubt, desertion and adultery, if they are truly alleged, might give her a right to get. The extent of the defendant's obligation is to receive and support her at his house; and there is no refusal, it is said, and therefore no right of action. As to the special answer and the evidence of adultery, that, it is contended, cannot be regarded—and I see there was an objection made to such evidence. In an action for *aliments*, it is urged, she cannot prove adultery; it is irrelevant. If she can't live with her husband, let her take an action *en séparation*. That fact does not give her a right to *aliments*—it gives her only a right to separation. That, at first, seems the sense of the text of the authorities, no doubt; but I will never consent to make an application of authority that seems to me absurd in any particular circumstances. The Code, no doubt, and Pothier (see C. C., Art. 175; and Pothier, Marriage, Nos. 381-2-3), seem to say to this woman: "You are obliged to go and live with your husband." He has even an action to compel her to do so; and she cannot oppose any *mauvais traitements* on his part. That is, no doubt, the law; but it seems to me, in the first place, as regards the mere text of the law, I am obliged to find a meaning in it, and to give it a reasonable application; and I hardly see how, if she can ask for a separation and its concomitant—the means of support—she cannot content herself with asking only a part of what the law gives her—that is, merely the means of support—under circumstances which he has forced upon her. But more than that, when she is told:—"You are obliged to go and live with your husband," she answers substantially:—"He has no home to offer me;" for it amounts to that, if what she says is true, and unless she has the faith of a Mormon. Therefore, though the husband's plea is good to that extent, where he