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UNIVERSITY OF LONDON
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11 OCT 1958

INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

ON APPEAL

FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA
IN THE PROVINCE OF QUEBEC, (APPEAL SIDE.)

Between LA BANQUE D'HOCHELAGA - - APPELLANTS,

AND

PIERRE AMABLE JODOIN ET AL RESPONDENTS.

CASE

FOR THE RESPONDENTS.

10 This is an Appeal from a Judgment of the Court of Queen's Bench for Lower Canada, in the Province of Quebec, (Appeal side), setting aside a Judgment of the Superior Court for the Province of Quebec, which had dismissed an Action instituted by the Respondents against the Appellants to recover from the latter One hundred shares in the Bank, and dividends accrued due on the said shares and interest on the dividends, less the amount of a note for \$2,000 and interest thereon, which they acknowledged they owed the Appellants,

20 The Judgment in the Superior Court was given on the 15th March 1892, and the Judgment in the Court of Queen's Bench on the 27th September 1893.

The Respondents sued as executors of the will and administrators of the succession of the late Dame Marie H el ene Jodoin, widow of the late Amable Jodoin fils.

By a writ and declaration dated the 16th and 23rd November, 1887, Declaration
Rec. pp. 7-9.

and set out on pages 7-9, of the record, the Respondents sued the Appellants for the conversion on the 31st December 1879, of One hundred shares for \$100 each in the capital of the Appellant's bank, which they alleged were the property of Dame Marie H el ene Jodoin. They claimed the said shares or their value; and the sum of \$1,310 as balance due for accrued dividends and interest thereon, after allowing for a set-off on a note for \$2,000 and interest thereon, which they admitted to be due to the Appellants.

Defence
Rec. p.p. 9-13.

The Appellants, whose pleas are fully set out pp. 9—13 of the record, pleaded a general denial of the allegations in the declaration and specially pleaded :— 10

1. That the shares had been subscribed and paid for by the late Amable Jodoin fils, at that time the husband of the said Marie H el ene Jodoin, and conveyed by him to her, and accepted by him for her, per proc., and that such conveyance was null and void as contrary to Article 1483 of the Civil Code.

2. That part of the dividends and interest claimed was barred by prescription.

3. That the said Dame Marie H el ene Jodoin, acting by her husband, duly authorised by power of attorney, made a promissory note for \$2,000 on the 11th October, 1875, which she similarly endorsed to the Appellants for value, and that she had paid interest on the same up to 1st January, 1879, and that the capital of the said note and the subsequent interest was still due as the Respondents admitted. 20

And they further pleaded that the said Dame Marie H el ene Jodoin had similarly, through the procuracy of her husband, endorsed and made over to the Appellants for value received seven other promissory notes of the dates respectively of 18th March, 22nd February, 22nd of March, 18th April, 26th May, 13th June, and 1st September, 1879, for the amounts respectively of \$3,250, \$2,000, \$1,000, \$2,250, \$250, \$5,000, and \$737.75. 30

That there was due at the time of the institution of the action the sum of \$25,883.06 for principal, interest, and expenses on the said notes. And that the said Dame Marie H el ene Jodoin had often acknowledged the debt, and promised to pay it, and that she had approved and ratified the acts of her husband with regard to the said notes and other dealings with her property; and they claimed that by virtue of the Bank Act, 34 Vic. c. 5, the Appellants had a right of lien and retention on the said shares for the payment of the amounts of the said notes whether the shares were the

property of the said Marie H el ene Jodoin or of her husband. They admitted that about the 31st December, 1877, the cashier of the bank made over the shares to the President of the Bank in trust for the bank, but stated that it was done to the knowledge of the said Marie H el ene Jodoin and with her consent to abandon the shares to the bank in part payment of the notes.

In their reply dated the 8th April, 1890, and set out pp. 21—23 of the Record, the Respondents stated, in answer to the first plea, that the shares had never been the property of Amable Jodoin fils, but had been paid for with the money of the said Marie H el ene Jodoin, and that the transfer of the 11th October, 1875, was not a sale between husband and wife, but an act to put the parties in their true position; and that on the same day she gave the bank her promissory note for \$2,000 on account of the shares, which note is referred to in the Appellant's pleas as the one of 11th October, 1875.

Reply,
Rec. 21-23.

In answer to the second plea they contended that there was no prescription, as the Respondents had admitted their liability for the sum of \$2,000 with interest on the note of the 11th October, 1875, as well as on another amount of \$392.31 with interest, and that there was a set off proportionally as the dividends and interest accrued in favour of the said Marie H el ene Jodoin to go in reduction of the said note for \$2,000 and the said sum of \$392.31, and that all balance in whosever favour after the set off, was established within five years of the bringing of the action.

In answer to the third plea the Respondents admitted their liability for the note of the 11th October, 1875, and for the balance of capital and interest on the note of the 1st September, 1877, for \$737.65 after having deducted from it \$345.44 paid on account of same 31st December, 1883.

As regarded the note of the 22nd February, 1877, the Respondents repudiated the endorsement on the ground that the said Amable Jodoin had never been authorised to give the endorsement, and that the power of attorney, in virtue of which he assumed to act, did not authorise him to give such endorsement. They further alleged that N. B. Desmarteau, the drawer of the said note had paid the note, and been discharged by the Appellants from all responsibility thereon, and that the said Marie H el ene Jodoin was thereby discharged as regards all the other promissory notes referred to in the Appellant's third plea, the Respondents denied that the said Amable Jodoin was ever authorised to endorse the said notes, and that if he had done so he had exceeded the mandate given to him by his wife the said Marie H el ene Jodoin, and they repudiated the endorsements.

They further alleged that the action of the officers of the bank in transferring the said shares on the 31st December, 1879, was illegal, null,

and void, and had never been authorised or assented to by the said Marie H el ene Jodoin or her representatives.

They further contended that even if the bank was the creditor of the Respondents to the amount claimed by them it could not be set off against the value of the shares.

Replication,
Rec. p.p. 24-5.

The Defendants by their replication dated the 29th April, 1891, and set out, pp. 24—25 of the Record said that the note of the 22nd February, 1879, for \$2,000 dollars, was only signed by the said N. B. Desmarteau for the accommodation of the said Marie H el ene Jodoin, who had alone received value for the note.

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They further said that all the notes in question in the action had been discounted by the Bank, on the account and for the benefit of the said Marie H el ene Jodoin.

Perodeau,
Rec. p. 62,
l. 47, Rec. p.
63 l.l. 1-5.
Rec. p. 63,
l.l. 34-6,
p. 64 l. 4.

It was admitted or proved at the trial that the late Amabel Jodoi fils, was not a man of means, but that his wife, the late Marie Hel ene Jodoin, had in September, 1870, succeeded to a very considerable inheritance, amounting to upwards of \$500,000 dollars, and that she was *separee quant aux biens*.

Power of
Attorney.
Rec. p. 14, 15.

On the 28th September 1870, M. H. Jodoin executed a general and special Power of Attorney, which is fully set out pp. 14, 15 of the Record. 20
By this she confided to her husband the active and passive management and administration of all her property, real and personal, and gave him among other powers, that of making, consenting to delivering and endorsing all promissory notes, and also that of accepting all conveyances of bank shares or stock.

Perodeau
Re p. 64, l.l.
21-2, 29-34.
Rec. p. 63,
l.l. 9-11,
P. 64, l.l.
10-20.

Amable Jodoin fils employed considerable sums of his wife's money in carrying on a foundry on his own account, in a wood business and various other speculations and investments, with very few exceptions in his own name.

Declarations,
Rec. p.p. 27-
30.

This he acknowledged in two formal declarations dated respectively 30
30th July 1871 and 19th December 1876, in the latter of which his wife intervened. These declarations are all fully set out, pp. 27-30 of the Record.

In these he declared that all the property standing in his name had been purchased with his wife's money, and belonged to her.

Deed of
Transfer,
Rec. p.p. 53-
55.

He made a similar statement regarding the before-mentioned foundry

in a Deed of Transfer dated the 27th February 1877, fully set out pp. 53 to 55 of the Record, to this Deed his wife also was a party.

The shares sued for were subscribed for by Amable Jodoin fils, in his own name on the 20th August 1873. Payments on account of the same were made by him as follows:—

Admissions
Rec. p. 58, 46,
7, p. 59, l.l.
1-17.

\$1000 on the 1st October 1873.

\$1000 on the 1st December 1873.

\$1000 on the 5th May 1874.

\$2000 on the 31st August 1874.

- 10 The balance of \$5000 was paid on the 30th October 1874, by a promissory note for \$5000, signed by Amable Jodoin fils, and endorsed by him in his own name.

Rec. No. 28,
p. 46,

In August 1875, Marie H el ene Jodoin borrowed from the Trust and Loan Company the sum of \$15000, which, less expenses, was paid to her on the 31st August 1875. On the 2nd September 1875, the sum of \$14,726.19 was deposited in the Appellant's bank to the credit of Amable Jodoin fils, and on the same day the promissory note for \$5000 of the 30th October 1874 was partly discharged by a cheque for \$2000, and the promissory note of the 11th October 1875 was subsequently given for the balance.

Admissions
Rec. p. 59,
l.l. 28-32.
Bank Book
Rec. p. 33 l.
21.
Giroux Recp.
60, l.l. 24-28,

- 20 On the 11th October 1875 the shares were transferred by a Deed of Transfer of the same date to Marie H el ene Jodoin, signed by Amable Jodoin fils, and accepted by Marie H el ene Jodoin par Amable Jodoin fils proc.

Deed of
Transfer
Rec. No. 17,
p. 25.

This Deed is set out p. 25 of the Record. The Appellants accepted the said transfer, and entered the shares in the name of Marie H el ene Jodoin in their books, and interest was paid on the note of the 11th October 1875 up to the 2nd January 1879, and the Respondents have admitted their liability on the said note, which is one of the notes on which the Appellants claim.

Admissions
Rec. p. 59,
l.l. 8-10.
Record No.
29, p. 47.

- 30 On the 31st December 1879, in accordance with a resolution passed at a meeting of the Directors of the Bank on the same day—copy of extract from the minutes of which meeting is set out on p. 26 of the Record—the cashier transferred to the president of the Bank, in trust for the Bank, the 100 shares in question in this action, and they were subsequently sold by the Bank for their own use. It was stated by a witness for the Appellants that both Amable Jodoin and Marie H el ene Jodoin were aware of and assented to the Appellants taking possession of these shares, but it was not proved that they did so formally, nor when they did so, nor that her husband formally authorised Marie H el ene Jodoin to assent to the transfer to the bank, and

Admissions
Rec. p. 59,
l.l. 11-17.
Rec. No., 18,
p. 26.
Brais p. 65
l. 47 p. 66,
l. 2.
Giroux, Rec.
p. 68, l.l. 1, 5.
Brais p. 66,
l. 5, 33-5.

P. A. Jodoin,
Rec. p. 74,
l.l. 18-24. evidence was given to show that such assents, if ever given, could not have been given for at least a week before the 31st December 1879.

No evidence was given of any formal notice having been given by the bank to either Amable Jodoin or Marie H el ene Jodoin of their intention to take possession of such shares.

There was no evidence that the thirty days' notice required to be given to the owner of shares before the sale thereof by the bank in virtue of 34 Vic. c. 5 S. 51 had ever been given.

- Promissory
Notes, Rec.
p.p. 16-19. The eight notes on which the Appellants claimed, are set out in full on pp. 16.19 of the record and are as follows — 10
- Rec. No. 6,
p. 16. (No. 1) A promissory note for \$2000.00, signed M. H. Jodoin par Amable Jodoin fils proc., payable on demand, dated 11th October 1875.
- Rec. No. 9,
p. 17. (No. 2) A promissory note for \$3250.00, payable three months after date, signed P. A. Jodoin, and endorsed Amable Jodoin fils, M. H. Jodoin par Amable Jodoin fils proc., dated 18th March 1879.
- Rec. No. 7,
p. 16. (No. 3) A promissory note for \$2000.00 signed N. B. Desmarteau M.D., payable four months after date, and endorsed Amable Jodoin fils M. H. Jodoin par Amable Jodoin fils proc., dated 22nd February 1879.
- Rec. No. 10,
p.18. (No. 4) A promissory note for \$4000.00, payable four months after date, signed P. A. Jodoin, endorsed Amable Jodoin fils, M. H. Jodoin par Amable Jodoin fils proc., and dated 22nd March 1879. 20
- Rec. No. 11,
p. 18. (No. 5) A promissory note for \$2250.00, payable at four months after date, and signed P. A. Jodoin, and endorsed Amable Jodoin fils, M. H. Jodoin par Amable Jodoin fils proc., and dated the 18th April 1879.
- Rec. No. 12,
p. 19. (No. 6) A promissory note for \$250,00 payable four months after date, signed P. A. Jodoin, and endorsed Amable Jodoin fils, M. H. Jodoin par Amable Jodoin fils proc., and dated 26th May 1879.
- Rec. No. 8,
p. 17. (No. 7) A promissory note for \$5000.00, payable four months after date, signed P. A. Jodoin, and endorsed Amable Jodoin fils, M. H. Jodoin par Amable Jodoin fils proc., and dated 13th June 1879. 30
- Rec. No. 13,
p. 19. (No. 8) A promissory note for \$737.75, payable twenty-four months after date, signed Jodoin and Cie., and endorsed Jodoin and Cie., M. H. Jodoin pour autoriser mon epouse Amable Jodoin fils, dated 1st September 1879.

(No. 1) The first of these notes was the one given in payment for the balance due on the 100 shares as before-mentioned, the Respondents admitted their liability on the note and also on the last one (No. 8), after allowing for the sum of \$345.44 paid on account of such note on 31st December 1883.

(No. 2) Was a partial renewal of a note for \$3500, which was originally discounted on the 14th April 1875; it was renewed by a note dated 16th August 1875, signed by P. A. Jodoin and endorsed M. H. Jodoin par Amable Jodoin fils proc Amable Jodoin fils, and the proceeds were credited to the account of Amable Jodoin fils on the same day.

1 Giroux
Rec. p. 68,
l.l. 36-47,
p. 69, l. 13,
P. A. Jodoin,
Rec. p. 71, l.l.
19-35.
Rec. No. 25,
p. 45.
Bank Book
Rec. p. 33,
l. 3.

This note was again renewed by a note dated 12th November 1875, signed P. A. Jodoin, endorsed Amable Jodoin fils, M. H. Jodoin par Amable Jodoin fils proc., and continued to be renewed by notes for a similar amount down to the 18th March 1879, when it was renewed for \$3250.00 by the note in question. This last note was carried to the credit of M. H. Jodoin.

Rec. No. 31,
p. 49, l.l. 27-9.

(No. 3) This is the renewal of a note for \$2000.00, which was discounted on the 24th February 1877, and the proceeds carried to the credit of M. H. Jodoin. It was renewed from time to time to the 25th February 1879, when it was renewed by a note of the 22nd February 1879, which is the note in question; the drawer of it, N. B. Desmarteau, was on the 7th December 1886, released from all liability thereon by the Appellants by the receipt of that date set out in the record p. 31.

Rec. No. 31,
p. 48 l. 18.
Bank Book
Rec. p. 40,
l. 14.
Rec. No. 31,
p. 48, l.l.
19-25.
Admissions,
Rec. 58, l.l.
7-8.
Receipt.
Rec. No. 23,
p. 31.
Giroux.
Rec. p. 69,
l.l. 37, 45.

(No. 4). A note for \$4000 was discounted on the 30th March, 1875, and renewed on the 4th August, 1875, for \$2000, for which sum it was from time to time renewed until the 2nd August, 1876, when it was renewed for the sum of \$4000, and the balance of \$2000 carried to the credit of M. H. Jodoin. This last note was renewed from time to time up to the 22nd March, 1879, when it was renewed by the note in question.

This note was carried to the credit of Amable Jodoin fils.

Rec. No. 32,
p. 50 & 51,
l. 16.

(No. 5). This is the renewal in part of a note for \$2500 discounted on the 6th September, 1875, and the proceeds credited to Amable Jodoin fils. That note was renewed from time to time up to the 18th April, 1879, when it was partially renewed by the note in question for \$2250.

Rec. No. 32,
p.p. 50-1,
l.l. 19-30.
Bank Book
Rec. p. 33,
l. 22.

This note was carried to the credit of Amable Jodoin fils.

(No. 6) Was probably a renewal of the balance of \$250 left over on the renewal of either note No. 2 or No. 5. It was first drawn on the 18th

P. C. Jodoin,
Rec. p. 71,
l.l. 36-44,
p. 73, l.l. 2-4.

April, 1879, and renewed on the 26th May by the note in question. This note was carried to the credit of M. H. Jodoin.

Rec. No. 31,
p. 48, 9, l. 29.

(No. 7) This is the renewal of a promissory note for \$5000 discounted on the 19th May, 1875, and the proceeds credited to A. Jodoin fils. It was renewed from time to time to the 13th June, 1877, when it was renewed by the note in question. This note was carried to the credit of A. Jodoin fils.

Rec. No. 31,
p.p. 48, 49,
l.l. 1-16.
Bank Book
Rec. p. 31,
l. 34.

The proceeds of the original notes, of which notes No. 2, No. 4, No. 5, No. 7, and probably No. 6 were renewals, were credited in the books of the bank to Amable Jodoin fils. He alone had an account open at the bank up to October, 1875. In October, 1875, that account was closed, and the balance to his credit \$2742.08 was carried to a new account opened in the name of M. H. Jodoin; but this new account continued to be under the control of A. Jodoin as much as when it was in his own name, and all cheques on it were drawn by him and signed M. H. Jodoin par Amable Jodoin fils. M. H. Jodoin had not previous to this had any account open in her name at the Appellant's bank.

Giroux,
Rec. p. 68,
l.l. 23-24.
Bank Book,
Rec. p.p. 31-4.
P. A. Jodoin
Rec. p. 72,
l.l. 1-4.
Giroux Rec.
p. 69, l.l.,
28-34.

There was no evidence that any of the proceeds of the notes had been applied to the separate benefit of the said M. H. Jodoin, but they seemed to have been disposed of by Amable Jodoin fils as he pleased.

Giroux, Rec.
p. 68, l.l. 23-4.

Some time anterior to the 5th November, 1879, Amable Jodoin fils made an assignment of his property under the Acte de Faillete, 1875, and on the 5th November the Appellants produced at the investigation a statement of accounts under which they claimed against him for notes No. 5 No. 4, No. 2, No. 7, No. 6, No. 3.

Admissions,
Rec. p. 58, l.l.
13, 18.

Rec. No. 30,
p. 47.

Amable Jodoin fils died the 8th January, 1880, and M. H. Jodoin on or about the 19th January, 1887.

Admissions,
p. 58, l.l. 40-1,
l.l. 42-3.

On the 15th March, 1892, the Honorable M. Justice Pagnuelo delivered the Judgment which is set out on pp. 3-6 of the Superior Court, which decided in favour of the Respondents on the first plea.

Judgment of
Superior Court
Rec. p.p. 3-6.

And on the third plea found in favour of the Appellants, and dismissed the action with costs.

From this Judgment the Respondents appealed.

On the 27th September, 1893, the Court of Queen's Bench for the Province of Quebec (Appeal side) gave Judgment reversing the Judgment

Judgment of
the Court of
Queen's
Bench, Rec.
p.p. 104-6.

of the Superior Court on the third plea, and condemning the Appellants to restore the 100 shares, or pay \$10,000 with costs.

The reasons for this Judgment were given by the Honorable Sir Alexander Lacoste, Chief Justice, and are set out in the Record, p.p. 115-9. ^{Rec. p.p. 115-9.}

On the 27th September, 1893 the Court of Queen's Bench for Lower Canada gave the Appellants leave to appeal to the Privy Council on the usual terms.

The Respondents humbly submit that the Judgment of the Court of Queen's Bench, of September 27th, 1893, is right, and ought to be affirmed, and this Appeal dismissed for the following amongst other

REASONS.

1. Because the transfer of the 11th October, 1875, did not amount to a sale by the husband to the wife, or a benefit conferred on her by him within the meaning of Articles 1,483 and 1,265 of the Civil Code.

2. Because the Appellants did not give the notice necessary to entitle them to sell the shares under Statute 34 Vict. c. 5. s. 51.

20 3. Because it is not established that either Amable Jodoin fils or Marie H el ene Jodoin authorised or assented to the actions of the Appellants.

4. Because the dividends on the shares as they accrued having been set off against the capital and interest due on the two notes, the liability on which is admitted by the Respondents, no prescription runs against the claim.

5. Because the Appellants discharged the drawer of the note of the 22nd February, 1879, and thereby released the endorser, Marie H el ene Jodoin.

30 6. Because the power of attorney given to Amable Jodoin fils by Marie H el ene Jodoin only empowered him to sign and endorse promissory notes for the purpose of the adminis-

tration of her property, and the endorsements on the promissory notes in question in this Action were not made for the purpose of acts of administration.

7. Because it was not proved that the notes were negotiated for and the proceeds applied to the separate advantage of Marie H el ene Jodoin.

8. Because the endorsements of the promissory notes in question constituted an obligation contracted by Marie H el ene Jodoin with her husband, Amable Jodoin fils towards the Bank, and is therefore void under Article 1301 of the Civil Code. 10

9. Because by the endorsements of the notes in question Marie H el ene Jodoin contracted an obligation for her husband, which was void under Article 1301 of the Civil Code.

10. Because the Judgment of the Court of Queen's Bench is right both as to the facts and as to the law.

R. W. MACLEOD FULLARTON.
REGINALD TALBOT.

In the Privy Council.

ON APPEAL

From the Court of Queen's Bench for
Lower Canada.

BETWEEN

LA BANQUE D'HOCHELAGA - APPELLANT,

AND

PIERRE AMABLE JODOIN ET AL
RESPONDENTS.

CASE

FOR RESPONDENTS.

J. & C. ROBINSON & WILKINS,

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