Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of La Banque d'Hochelaga v. *Jodoin et al., from the Court of Queen's Bench for Lower Canada in the Province of Quebec; delivered 27th July* 1895.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The Plaintiffs, who are now Respondents, are the testamentary executors of Madame Marie Hélène Jodoin, widow of Amable Jodoin *fils*. The suit is brought to recover from the Defendants, now Appellants, La Banque d'Hochelaga, 100 shares, of the par value of $100 a share in that Company, and also the dividends declared on the same shares since December 1879. These shares were purchased in the name of the husband Amable Jodoin, were transferred by him into the name of the wife Marie Hélène Jodoin, and were appropriated and sold by the Bank to meet debts which they alleged to be due from both husband and wife.

The principal points of contention have been, first, whether as between husband and wife the shares were the property of the wife; and secondly, whether the wife could be made liable on certain promissory notes signed by the husband in his own name and also in her name as her *procureur* or attorney.

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It is common ground that the husband was quite destitute of property when he married; that the wife had a large fortune, perhaps half a million dollars; that by their marriage contract the spouses were separate in property; and that the husband managed the wife's property.

On the 28th September 1870 a document endorsed "*Procuration générale et spéciale*" was duly executed by both spouses, whereby the wife constituted the husband "*Son procureur* "*général et spécial*" to administer for her and in her name all her goods and affairs. Then the document specifies a number of different acts which the attorney may perform, and amongst them the following:—

"*Et pour et au nom de la dite constituante* "*gérer, faire et transiger toutes affaires* "*quelconques avec les Banques incorporées* "*ayant leurs Bureaux d'affaires en la dite* "*Cité de Montréal et ailleurs, tirer, accepter,* "*transporter et endosser toutes lettres de change* "*ou traites; faire, consentir, délivrer et endosser* "*tous billets promissoires.*"

On the 30th July 1871 a declaration was executed by the husband, in which he stated the power of attorney, and that he had administered accordingly, and had, in order to watch the better over his wife's interests, at her request taken up in his own name divers "*sommes de* "*deniers*" which nevertheless really belonged to her, and also certain shares in banks (not the Appellant Bank) which, though apparently his, were really hers. Then he declared that he had nothing of his own, and no means of ever acquiring such large sums for himself; and that to avoid any difficulty which might arise on his death, everything standing in his name should be deemed to belong to his wife.

On the 20th August 1873 the husband subscribed for the shares in question, and about

the same time he opened an account with the Bank in his own name. The account so continued until it was transferred into the name of the wife, apparently on the 1st October 1875, but the exact day is not material. Both accounts were ordinary current accounts drawn upon by the husband; and on the credit side were placed from time to time sums advanced by the Bank on the security of promissory notes which, or some of which, have been renewed and have never been paid. These notes were endorsed by the husband in his own name and then in the name of the wife by procuration of the husband. Except for the change in the name of the customer, the course of practice on the accounts never varied from beginning to end of the dealings. The shares also were transferred into the name of the wife about the same time as the transfer of the account, viz. on the 11th October 1875.

On the 19th December 1876 another declaratory act was passed by the husband (the wife also intervening) to the same effect as the declaration on the 30th July 1871. It stated explicitly that the husband was to take no profit and to suffer no loss by the personal transactions in which his name was used.

On the 27th February 1877 another declaratory act was passed by the spouses, and by Pierre Jodoin their son, one of the present Plaintiffs. After referring to the recent declaration of the 19th December, and stating that it thereby appeared that all the seeming possessions of the husband were really the property of the wife, and that the husband was carrying on an immense foundry under the firm of Jodoin *et Cie*, but with the funds of the wife, the two made over the foundry business to their son.

In September 1879 Pierre became insolvent. In the course of the same year Madame Jodoin's

affairs were much embarrassed, and, as the Bank claimed that she was in debt to them, the directors ordered her shares to be transferred to the President. It appears that they were sold soon afterwards, and the proceeds appropriated to reduce the Bank's claim. On the 8th January 1880 the husband died. The wife survived till the 29th January 1887. She never made any claim for the shares, nor for dividends which were regularly declared half-yearly from the 2nd January 1882 to the 2nd January 1887. In December 1887 her executors brought the present action.

It is said that the dealings of the Bank with the shares were irregular, and that they should have given notice to the alleged debtor before proceeding to sell. It is not however suggested that she suffered any loss by this irregularity, or at any rate not such loss as would make her the Bank's creditor instead of its debtor. This point therefore may be disregarded.

As regards the ownership of the shares there can be no doubt. The difficulties suggested with reference to transfer of property as between spouses do not occur here. There was no transfer of beneficial interest. Both Courts have found that the repeated declarations of the parties respecting the husband's apparent property were genuine. The husband had nothing; the wife had all. His transfer to his wife did nothing except to bring the formal and apparent title into accord with the real and substantial one.

The question whether the wife was in debt to the Bank turns upon her liability in respect of the promissory notes. If she was liable on them, their amount is greater than the value of the shares, and the Plaintiffs cannot recover anything. Her liability on some is admitted, but as to the larger part it is disputed. The Superior Court held that she was liable on her

husband's signature. The learned Judge considered that this conclusion was a necessary result of the power of attorney, coupled with the establishment of the fact that everything in the husband's name belonged to the wife. He therefore dismissed the action. The Court of Queen's Bench came to a different conclusion. They condemned the Bank to restore the shares or to pay their value, reserving certain questions, which according to their Lordships' view of the case cannot arise.

The main argument offered in support of this view is that the power of attorney does not authorize the making of promissory notes. It is said to be a general power, and therefore by Article 181 of the Civil Code restricted to notes required for purposes of administration. No doubt the power is general; but it is also special, not only in name but because it specifies a number of particular acts, among which are, the transaction of business with banks, drawing bills of exchange, and making promissory notes. Mr. Fullarton produced no authority to show that in an instrument so framed each particular act must be limited to an act of administration because the whole series is ushered in by a grant of general power to conduct and manage property and affairs; nor does such a limitation seem reasonable. Their Lordships hold that the wife, being as between her and her husband sole owner of property, gave him full power to make promissory notes in her name. They cannot see why the Bank should not trust to this power, or why it should make enquiry as to the particular state of the wife's affairs which called for an advance of money. The whole affair was the wife's affair.

Whether the advances were or were not for general administration in the sense of the Civil Code, does not appear. There is no

evidence on that point. The Court of Queen's Bench have decided against the Bank, apparently because the advances were so large that the Bank must have known that they could not be required for the administration of the wife's property. Considering her large fortune, and the immense foundry which up to February 1877 was hers, that assumption is very doubtful. The Bank however were not bound to enter on any such inquiry, or to look beyond the clear terms of the power of attorney.

This view of the husband's position appears to their Lordships to dispose of nearly all the reasoning in support of the decree. But it may be added that the wife certainly had the benefit of the advances. Mr. Fullarton undertook to show the contrary, but failed to do so. The advances made prior to October 1875 were carried to the husband's account. But we know that what was apparently the husband's was really the wife's. When the transfer of account was made, the balance standing to the credit of the husband, which owed its existence to the advances, was carried to the credit of the wife; and so were subsequent advances. Mr. Fullarton then argued that she did not get the benefit of the advances if she was liable on the notes; but one who gives a promissory note does not fail to get the benefit of the money raised by it because he must pay it when due. The arguments on this head are in substance an attempt to make out that the change in the form of accounts made in October 1875 was really a change of the actual customer dealing with the Bank; and they are inconsistent with the cardinal point affirmed by both Courts: viz. that throughout the whole transactions the husband was a name, and the wife the substantial party, who was to have all profits and to bear all losses.

It may also be added that the silence of Madame Jodoin during the seven years of her widowhood raises a strong presumption that in her opinion she had suffered no wrong by the Bank's dealing with her shares. It is suggested that she did not know of the purchase or transfer of the shares. That is a highly improbable suggestion; no evidence is adduced in favour of it; and certainly it ought not to be presumed against the Bank, who are placed at a serious disadvantage by the delay. The only positive evidence on the point is that of Brais, who as cashier of the Bank, and also as a relative of Madame Jodoin, had several conversations with her before and in the year 1879. He states that she well knew her liability on her husband's endorsements, and acquiesced in the transfer of her shares to reduce her debt to the Bank in that year. The evidence of this witness, speaking as he does after Madame Jodoin's death, would be of little value if there were nothing else in the case; but it is admissible; it is the only evidence; it is in accordance with the probabilities arising from the proved dealings of the Jodoin family with one another; and it is not met by proof, or even by suggestion, of any new discoveries, made since the lady's death, by which the truth came to the knowledge of the Plaintiffs.

The conclusion of their Lordships is that the Plaintiffs' demand fails in justice and in law; and they will humbly advise Her Majesty to discharge the judgment of the Court of Queen's Bench, to dismiss the appeal to the Court of Queen's Bench with costs, and to restore the judgment of the Superior Court. The Respondents must pay the costs of this appeal.