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Legal Intelligence.

The monthly sitting of the Equity Court was held at Fredericton, last week, and as the Judgment in the following case has a local bearing, we copy it from the *Head Quarters*:-

On Tuesday last, Judge Allen gave judgment in the case HEALY v. FAULS, a suit brought to restrain the defendant from proceeding in action of ejectment brought on a mortgage given to him by the plaintiff in 1862. The facts were somewhat complicated, and the evidence (as usual) very conflicting. It appears that Michael Fauls, the father of the defendant, and the father-in-law of the plaintiff, owned a good deal of real estate in St. Andrews, and in 1844 conveyed the whole, or the principal part of it to his son Patrick, and on the following day Patrick made a conveyance of part of the same property (including the land in question) to the defendant for the nominal consideration of £300. The defendant was at that time under 13 years of age, and knew nothing of the deed until upwards of seven years afterwards, and never paid anything for it. Patrick left the country in 1851, and died soon afterwards. Michael Fauls, the father, remained in possession of the property and appeared to control it up to the time of his death in 1863 or 1864. According to the plaintiff's evidence, Michael Fauls, about February, 1862, told the plaintiff and his wife that he intended to give her the lot of land which was afterwards included in the mortgage; that he measured the land off, and put the plaintiff and his wife in possession of it, and they had built a house upon it. Michael Fauls then instructed a person to prepare a deed of this piece of land, from him to the plaintiff, and also a mortgage upon it from the plaintiff to Fauls for the sum of \$300, payable in eight equal annual instalments, with eight promissory notes for the same sum and payable at the same periods on the mortgage. The plaintiff stated that he asked Fauls what he wanted the mortgage and notes for if he was intending to give the property to his (Healy's) wife, and that Fauls answered that he only did it to protect him (Healy) from incumbering the property, as he was rather intemperate, and he wanted to secure it for the benefit of Healy's wife and children; and that he, Fauls, would never demand payment of the mortgage notes; and that he never did. Healy's wife swore to substantially the same thing. When the deed and mortgage came to be executed, it was discovered by Healy that the title on the records stood in the name of the defendant, and that the mortgage and notes, which had been prepared by Fauls's direction were then destroyed, and a new deed drawn from the defendant to Healy, and a mortgage from Healy to the defendant for \$300, payable in eight years, as before, with eight promissory notes. The whole arrangement of this matter was made with Healy by Michael Fauls, the father—there never having been any communication about it between Healy and the defendant. The mortgage was not registered till about two years after this, and the plaintiff alleged that Michael Fauls kept the notes. The defendant denied the whole case set up by the plaintiff. He said the transaction was a sale; that he had authorized his father to sell the property to the plaintiff for \$300; that the mortgage and notes were given to him when he executed the deed, that he had endorsed the notes, and handed them to his father to collect for him; and that there never was any understanding or agreement that the property was held as a trust for the benefit of his sister (Healy's wife) and her children. After the defendant brought the action of ejectment on the mortgage, and a few days before the trial, Michael Fauls, the father, gave the eight promissory notes to the plaintiff's wife, saying that he considered the mortgage as paid, and wished the action of ejectment stopped, as he intended the property for the plaintiff's wife. The defendant (Fauls) recovered a verdict of the action of ejectment, as Healy had no defence at law. An *ex parte* injunction was granted to stay the execution, and an application was made to dissolve the injunction, which was not successful. Before the final hearing of the cause, Michael Fauls, the father died.

The principal objections on the hearing to the plaintiff's right to the recovery were: 1st, that the case set up by him was a trust which, according to the Statute of Frauds, could only be proved by a writing, which did not exist in this case. 2d, that Michael Fauls not being the owner of the property (the legal title being in the defendant), could not declare a trust; 3rd, that as the defendant by his answering and evidence had denied the case alleged in the bill, no decree could be made, as it was only the plaintiff's oath against the defendant's. In giving judgment, the Judge said that he placed much more confidence in the plain-

tiff's evidence than in the defendant's, which, in many particulars, was very unsatisfactory; and he referred to affidavits made by the defendant and used on the motion to dissolve the injunction, which were altogether at variance with his evidence given on the hearing, and he was so contradicted by other documents in evidence.

The Judge said that he believed the transaction was substantially as alleged in the bill; and that it never was the intention that the \$300 should be paid; that if the mortgage had been given to Michael Fauls, the father, on the terms stated and he was proceeding to eject the plaintiff, it would clearly have been such a case of fraud as would have taken the case out of the operation of the statute, and justified the interference of the Court. That though the defendant was nominally the legal owner of the property, he believed that his father-in-law was really the owner, and that the arrangements made by him (the father) with the plaintiff respecting the mortgage and notes were made with the consent of the defendant; and that his attempt to enforce the mortgage was a fraud on the plaintiff which the Court ought to prevent. That as to there being only the oath of the plaintiff against that of the defendant, he thought the plaintiff corroborated in material points by witnesses, and therefore there was a preponderance of evidence in his favour, which would entitle him to a decree. The order of the Court was that the injunction to stay the execution in the action of ejectment should be made perpetual.

MARK SHIPLEY'S ATONEMENT.

"Hallo, Shipley! good evening, old fellow! We've stepped in to carry you off with us. You know you promised long ago to take a look in at Mason's, and we won't let you off. So put on your hat and come along."

Mark shook his head; "you must excuse me, it was, as you say, long ago when I made that promise, and my opinions have changed somewhat; moreover Mason's was not then the regular gambling-house it is now. Be generous and give me back my promise, boys. I don't want it said that I ever entered such a place."

For reply, his friends burst into uproarious laughter. After some remonstrances, Mark suffered himself to be persuaded to accompany his friends, feeling in honor bound to go, since they would not release him from his promise; for it had always been his pride that his word once passed, had never been broken.

Mason's was a so-called private gambling-house, and open only to the upper classes. Several gentlemen were gathered about one of the numerous tables, deeply engaged in the game of *rouge-et-noir*.

Our three friends looked on for a while in silence, and then Burton and Haver drew nearer, and each staked a small sum. They won, and again risked a larger sum—again fortune favored them; and then—alas for human nature and human resolution! Mark Shipley, carried away by the excitement of the moment, forgot the lesson of his father's past, and threw down upon the table a golden coin.

"Hurrah, Shipley," cried Burton. "Well done! You are a true man, for all your squeamishness. You see these things don't look so bad when you are right close to them. The *rouge-et-noir* tables are very tasty—not at all repulsive."

But Mark already regretted his impulsive act. "Ah, Burton," he said, "there is the whole trouble in a nutshell. It is because gambling looks so harmless at first that so many noble-hearted fellows are ruined by it."

This he spoke in all earnestness; and yet a few moments later, when the gold returned to him doubled in amount, he staked it again; and yet again it came back to him, four times the amount it first started—forty dollars instead of ten.

"Try it again, Shipley!" cried Haver. "Down with it on the *noir*!"

"No, on the *rouge*," and Mark, with flashing eyes and flushed cheeks, laid down his forty dollars on the spot referred to. Again he won, and eighty dollars were handed him by the banker—a clear gain of seventy.

"What a splendid run of luck, Shipley!" cried Burton. "Double, triple the amount; you're sure to win!"

Mark hesitated, but the reckless fascination of the game was in the ascendant, and he risked the larger sum suggested by his friend, placing it this time on the "inverse," and then he waited with breathless eagerness for the result. It was against him; but so far from checking his wild career, it seemed rather to incite him to further risks.

"Two hundred dollars on the *noir*!" A moment's suspense, and again he lost.

As this result was announced Mark's face grew pale, and with a shock he awakened to a full appreciation, not only of the debt he had incurred, but of the sin he had committed—of the self-imposed yoke he had broken. Faint and sick at heart, he gave his note for the sum due Mason, and then bidding his friends a brief good night, hastened homeward.

As he was really imagined, his reflections were far from pleasant. Aside from the reproaches of his conscience, the sum he had lost was by no means an inconsiderable one, and his salary as private secretary to a wealthy banker no other than his intended father-in-law could ill withstand this heavy draft upon it. Moreover, his next quarterly payment would not be due for a month to come, and he had but very little money on hand.

"If Mason will only wait till this month is out," he thought, "I can weather the storm I have brought on myself, and then"—he raised his hand solemnly toward heaven—"I will never again enter a gambling-house or engage in any game of chance, so help me God!"

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"Very well, sir," said the man as he turned towards the door, "I'll come to-morrow, as you say, but if that money is not forthcoming, I will go straight to Mr. Morton, and tell him what a nice son-in-law he is going to have. You know him as well as I do, and I am more mistaken than I ever was in my life if he don't cut you adrift for this business the moment he hears of it, so you had better get the money ready and keep it all from him."

This was early in the morning, and soon after Mark walked down to the bank, thinking it all over with a sinking heart. He could not raise the sum required. Burton and Haver were unable to lend it, and to no other friends could he apply.

So, on the morrow, all would be over, and his brief, bright dream of love at an end, and in its place sorrow and disgrace.

He had brought it all on himself, too, and this knowledge made his thoughts all the more bitter, for he felt that he deserved the misfortunes which were thronging about him—he was not worthy to call sweet Jennie Morton by the sacred name of wife.

The day wore on; and, as the hour for closing the bank drew near, Mr. Morton rose from his chair to depart, but at the office door he suddenly paused.

"I had nearly forgotten, Mark. Just look in my desk—here is the key—and you will find four hundred dollars in cash that I wish you would look up in my private vault. You will be up this evening, of course? Jennie expects you; so good-bye for the present."

Left alone, Mark opened the banker's desk and gazed intently on the cash bag which contained the gold. His cheeks grew deathly white, and his frame shook like an aspen leaf. He put forth his hand and touched the coin, then drew back as though stung by a scorpion. Once more he advanced his hand, and this time he clutched the bag; then taking down his overcoat from the nail upon which it hung, he threw it over his arm in such a manner as to conceal the gold, the latter being too heavy to place in his pocket, and hurriedly left the bank.

"This will save me," he uttered; "and before Mr. Morton can miss it I shall have replaced it from my salary—only one week to wait for it now. Oh, how low I have fallen—a gambler and a thief, I, Mark Shipley!"

"Well, sir," said Mason, "here I am. Can you say the same of the money you owe me?"

"Here it is," replied Mark, hoarsely. "Count it, to make sure it is right, and then begone, and never dare to cross my threshold again."

"Not unless you cross mine, never fear. Well, it's all right, sir. There is your receipt that I have carried in my pocket these three weeks. I am thankful to give it to you at last."

Mason moved toward the door with a sneering laugh; and Mark, excited beyond control, advanced toward him with uplifted hand, a silent threat that was not lost on its object, who quickly vanished.

It was not quite time to go to the bank, and Mark spent the interval in walking up and down his room. At length he threw himself into a chair and bent his head upon his hands. Directly he looked up with a brighter glance in his eyes, a firmer expression on his face.

"I will do it!" he exclaimed. "I've resolution been my bane through life; but for that I should never have fallen thus low. Oh, Jennie, my beloved, Heaven grant that you care not for me as I had once hoped and believed! I would fain that this sorrow should fall upon me alone, who have deserved it all."

He walked rapidly to the bank, and entering Mr. Morton's private office, found that gentleman seated at his desk. Pressing his hand over his fast-throbbing heart, Mark advanced, and stood in silence until his employer looked up.

"Why, Mark, you look ill!" he exclaimed. "What is the matter? Sit down, sit down."

"I am ill, sir, answered the young man, slowly—in a faint voice. I have committed a great sin, and have come to you to confess it."

And then, in brief, clear words, he told it all—his first false step and its consequences, his temptation and his fall.

Mr. Morton listened in silence. He was a kind-hearted, upright man; and while his sense of honor was shocked at the story of Mark's wrongdoing, his heart recognized the inherent nobleness in the young man's character which had led him to confess his crime. He longed to speak to him words of comfort, but nevertheless he deemed it best that he should suffer yet a while longer, in order that the remembrance of these dark hours of sorrow and humiliation might never fade away.

"Mark, he said, I need not say how shocked and grieved I am—you know all that. You have sinned; but you have proved your repentance, for you know as well as I that in all probability I should never have discovered the absence of the money. For this reason I shall retain you in your position here. I trust you still, you see. But Mark, tell me on your sacred honor and conscience, do you think I would do right to confide the happiness of my child to one who has sinned as you have? Are you worthy of her?"

He waited for an answer, and it came in low gasping tones:

"No, sir, I am all unworthy. You would do wrong to give her to me now. I will not seek her—you may trust me for that. Tell her, yes, tell her what I have done, and then she will cease to love me, and not suffer as I shall. Would I might die; but I must live to work out my atonement."

"Be it so, Mark," answered Mr. Morton, and then he went hastily out from the office that the young man might not see the tears in his eyes. But Mark could not have seen them had he stayed, because of the scalding drops which were blinding his own sight.

Time passed on. Two months had gone by, and Mark, a wiser and a nobler man, was steadily working out his atonement. Not once had he looked upon her who had so nearly become his bride, nor had her name once been mentioned between him and her father.

The bank closed at three o'clock, its officers and clerks having generally all departed at four; and then, from this latter period until five o'clock—the hour of the night watchman's arrival—the building was entirely deserted. Mark had some extra work to do, and not having completed it when his friends left the bank, remained in Mr. Morton's office for that purpose.

His pen ran steadily over the paper before him, but suddenly he laid it down and bent his head as if to listen. His quick ear had caught the sound of stealthy footsteps in the passage leading to the office in which he sat. A moment's attention convinced him that he was not mistaken. The steps paused at the door, and a man's voice exclaimed:

"Come, hurry along, Bill; this job's got to be done quick. The watchman will be here before long, and we'll find our-elves in a pretty muss if we are not off first. There's a door in this here office leading to the vaults, and I have got keys that will open all ahead of us. These here skeletons are precious nice things."

Quick as lightning Mark comprehended it all. These men had concealed themselves in the bank to await the departure of its officers, and now were prepared to break into the vaults.

Grasping the high stool on which he ordinarily sat, Mark glided across the room and stationed himself on one side of the office door. Scarcely had he done so when it was opened, and the foremost burglar entered, to receive a heavy blow from the stool, which sent him reeling back into the passage-way.

His astonished comrades looked cautiously in through the open door.

"Hurrah! only one man! We'll soon finish him. Come on, down with him!"

Five men rushed into the apartment, but Mark had been too quick for them. With a sudden bound he crossed the room, and placed his back against the iron door opening into the passage to the vaults below.

First and furthest were the blows aimed at him, but his long-legged stool proved an admirable weapon of defence, not alone repelling the attacks of his assailants, but in laying one of them insensible on the floor.

"Hang it, we'll have to use powder after all, and risk the noise," exclaimed one of the robbers; and as he spoke, he presented a pistol at Mark and fired.

The stool dropped with a crash from his powerless hands, and he fell heavily to the floor, the blood flowing from a wound in his side. The robbers pushed him aside, and he saw one of their number draw a bunch of skeleton keys from his pocket and fit one to the door. Then all grew dim before him, and he knew no more until he opened his eyes to find himself in a darkened room.

"Where am I?" he asked, and the sound of his voice startled him, so weak and low was it.

No answer was made him, but a slight, graceful figure started up from his side and sped from the room. A moment later Mr. Morton entered and stood at the bedside. Mark repeated his question.

"You are in my house, my dear boy," was the reply. "You have been very ill for weeks, and must not attempt to talk, though you are better now. Hush, not a word!"

The young man was too weak to oppose the mandate, so he closed his eyes and soon sank into a peaceful slumber.

A few days subsequently, when Mark was stronger, Mr. Morton told him how the watchman, entering the bank in company with a friend, had been startled by a pistol shot, and hastening in the direction of the sound, had discovered the robbers in the act of opening the iron door which Mark had so ably defended. The man had fled, all save one, who lay on the floor insensible. If they gave into the charge of a policeman whom they summoned; and he had since recovered and turned State's evidence so that the whole party had been captured.

As for Mark, they had thought him dead at first, but Mr. Morton sent for in all haste had conveyed him to his own house, and called his wavering spirit back to life again.



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