

IMPORTANT MORTGAGE LOAN DECISION.**A MORTGAGE LOAN TO A WIFE FOR HUSBAND'S BENEFIT DECLARED ILLEGAL.**

A decision was given in the highest court in this province on the 25th inst., which is of extreme importance to lenders of money on mortgage securities. The judgment was given as a joint one deciding two cases relating to the same property in which the same question was involved. The main one was entitled "The Trust and Loan Company of Canada appellant, and Dame Hermine Labrice de Kerouack respondent." Judgment was rendered by Mr. Justice Wurtele, of which the following is a synopsis:

The respondent, who is the wife of Albert J. Corriveau, owned real estate in the town of Iberville. On the 11th March, 1897, she borrowed \$4,000, on interest at 6 per cent., from the Trust and Loan Company of Canada, and hypothecated, that is, mortgaged her lot of land to secure the reimbursement of the loan and the payment of the interest. On the 24th Feb., 1900, she obtained the sum of \$1,000 from Thomas Gauthier for one year, on interest at 12 per cent., and to secure the capital and interest she executed a deed of sale of the lot of land and buildings in favour of Mr. Gauthier, with the right of redemption during the term of one year. The Trust and Loan Company has sued Mr. Gauthier hypothecarily for the loan of \$4,000, and brought Mrs. Corriveau into the suit as an interested party. Mr. Gauthier has not pleaded to the action, but Mrs. Corriveau has done so and contends that the transaction was entered into for the use and benefit of her husband, and at his solicitation; that she did not receive the money borrowed and derived no benefit from the transaction; that such transaction was in violation of article 1301 of the Civil Code, and that any obligation contracted by her under the deed of obligation in favour of the Trust and Loan Company was void and of no effect; and she consequently prayed for the dismissal of the action.

The Trust and Loan Company alleges that the loan money was paid to the wife of Corriveau by a cheque and that it was to be used for improving her property. It appears, however, that the cheque was handed to her husband and the proceeds were applied for his use and benefit. The judgment of the court reads:

"A wife is under the ban of the law when she seeks to effect a loan; she is incapable of contracting and binding herself when it is shown that the money borrowed was neither wanted nor used for her own individual requirements. The law is prohibitory, and is one of public policy, and, therefore, whether the lender was in good or in bad faith in the transaction is immaterial; all that is required to obtain the annulment of a wife's contract of loan

is proof that the money was neither required nor used for her individual purposes. It has, however, been urged that the acknowledgment contained in the contract of loan that the money was received by the wife, throw upon her the obligation of showing how the money was expended, that it is not sufficient to show that the money had been handed over to the husband, but that the husband had really used the money for his own purposes; this, however, is not the rule; it is sufficient to show that the money was not used for her and had been given to her husband."

It was declared that the law does not require that the party from whom the wife obtains a loan should know that it is for the benefit and use of the husband. The law prohibits and the lender must be on his guard.

"It is for him to use proper caution, and to see to the due employment of the loaned money for the purposes of the wife. If he does not do so, and is subjected to a loss, he has, in face of the law, only himself to blame."

On these grounds the majority of the court decided that, according to article 1301 of the Civil Code,

"A wife cannot bind herself for her husband, and any such obligation contracted by her is void, and of no effect. This law is not only prohibitive, but is also one of public order and policy, which has been made not only in the interests of private individuals, but also for the general and public good by giving special protection to wives, who certainly require it, not only by reason of the subjection in which they stand, being under the control and power of their husbands and subject to their pressure, but also by reason of their weakness and natural desire to assist their husbands. The policy of the law is to protect wives on the one hand against the solicitation and pressure of their husbands, and on the other against themselves."

The mortgage, therefore, on which the Trust and Loan Company advanced money to Madame Corriveau, on her own property, was declared null and void. The case will be carried to the Privy Council. Until a final decision is given reversing the above, loans made to married women, secured by mortgage on their own property, cannot be safely made. Even a declaration by the wife that the money is for her sole use and benefit does not obviate the risk, for the court said on this point: "If this were the rule the law would be fallacious, because the husband or the lender could always obtain such a declaration." It is to be hoped that the judgment of the Privy Council will be obtained as early as possible as very grave interests are involved which will remain in a state of suspense until the final decision is given.

OTTAWA CLEARING HOUSE.—Total for the week ending October 23, 1902, Clearings, \$2,402,901; balances, \$806,679. Corresponding week last year, clearings, \$1,676,702; balances, \$404,056.