

MEREDITH, C.J.O., reading the judgment of the Court, said that it was not open to question that it was agreed that the moneys advanced by the respondents to Du Vernet were to be secured by 500 shares of the capital stock of the Union Bank of Canada and 500 shares of the capital stock of the Union Trust Company; that the advances made by the respondents to Du Vernet were made on the faith of that agreement; and that the appellant bank was aware of that agreement.

But the Union Bank shares were not transferred to the respondents on the books of the bank; instead, there was deposited with the Union Trust Company a certificate for the shares in the name of Du Vernet, with a power of attorney to transfer them, signed by him. The effect of this was that it was in the power of Du Vernet, who remained the legal owner of the shares, to dispose of them in fraud of the respondents, and, as the appellant bank contended, to leave them subject to its statutory lien upon them for any indebtedness or liability of Du Vernet to the bank; and the question for decision was, whether or not the bank was entitled, as against the respondents, to a lien on the 200 shares which remained of the original 500 for an indebtedness of about \$30,000 of Du Vernet to the bank, which existed when the arrangement as to the advances to be made by the respondents was entered into and carried out.

The fact that the respondents left the bank-shares to stand in the name of Du Vernet in order that his position as a director of the bank might not be prejudiced, or even if there was the additional reason that the respondents did not wish to take upon themselves the liability they might incur by becoming shareholders, was immaterial as far as the question that had arisen was concerned. The respondents might be willing to take the risk of Du Vernet dealing with the shares in fraud of them, but it was impossible to suppose that either they or the bank contemplated that the shares would be subject to the bank's lien, which, if asserted, would have wiped out the whole security.

As a matter of fair dealing, and, in the opinion of the learned Chief Justice, as a matter of law, a duty rested upon the bank to disclose to the respondents the existence of the indebtedness of Du Vernet and the lien for it, if it intended to preserve its lien; and, that not having been done, the bank was precluded from now asserting the lien.

There was no reason for concluding that the respondents were estopped from claiming the dividends on the bank-shares. The dividends were not received by Du Vernet, but were retained by the bank in the exercise of its alleged statutory lien; and, if the right to the lien did not exist as to the shares themselves, it followed that it could not be asserted against the dividends.