

CLUTE, J., in a written judgment, said that the house and lot were the property of the plaintiff Emma Mundier, the wife of the plaintiff Mark Mundier. The plaintiff Emma owed the defendant Robinson \$47 and interest on a certain promissory note, and the plaintiff Mark owed Robinson \$41.40 on an open account. The defendant Robinson sued the husband and wife in one action in a Division Court upon the note and the account. They were personally served, and on the 4th March, 1916, judgment was entered against both of them by default for \$89.15 for debt and \$5.08 for costs. Execution against the goods of both was placed in the bailiff's hands, and on the 2nd August, 1916, he made a return of nulla bona. On the 17th August, 1916, Robinson caused a writ of fi. fa. lands to be issued on the judgment, directed to the Sheriff of Welland, who on the 30th October, 1917, sold the house and lot of the plaintiff Emma to the defendant Robinson for \$126. The property was incumbered to the amount of nearly \$1,400. On the 11th June, 1918, Robinson sold his interest in the property (subject to the incumbrances) to the defendant Henderson for \$150 and taxes.

The learned Judge found that the property was worth at the time of the sale about \$1,800; that the wife was responsible for the note only, and the husband was responsible for the account; and that obtaining a judgment for the two sums against both husband and wife was a misuse of the Court procedure; but Robinson's conduct did not shew an intent to defraud, and the wife, if she had defended the action, could have established that she was not liable for the amount of the account.

The learned Judge also found that the plaintiff Emma was liable for the promissory note sued upon, though it was made for the debt of her husband; she understood perfectly well what she was doing; and the case did not fall within *Bank of Montreal v. Stuart*, [1911] A.C. 120.

The evidence satisfactorily shewed that there were not sufficient chattels upon which the amount of the judgment could have been realised. The action of the sheriff in making the sale was not unreasonable or illegal.

The defendant Robinson, before he sold to Henderson, offered to reconvey the land upon being paid the amount of his judgment and costs; and Henderson afterwards offered to reconvey upon being paid the amount which he had paid to Robinson, plus payments made by him upon the mortgage and for taxes.

The joining by Robinson of the wife with the husband and obtaining judgment for the amount of the note, for which she was liable, and the amount of the account, for which she was not liable, was not such an abuse of the procedure of the Court as to render the judgment void. While what was done was irregu-