

balance qui est encore due à cette dernière, et qu'en lui faisant perdre la collocation faite à son profit comme créancier de l'hypothèque en question, il serait dépouillé de droits hypothécaires légalement acquis; cette Cour déclare que la collocation faite en faveur de Beaudoin est conforme aux droits respectifs des parties, et qu'il y a erreur dans le dit jugement du 13 Septembre, 1879, qui l'a déboutée; infirme et annule le dit jugement, et rendant celui qu'eût dû rendre la dite Cour Supérieure, déclare la contestation des dits J. R. Thibaudeau & al., mal fondée et la renvoie, et condamne les contestants à payer les frais tant de la dite Cour Supérieure que de cette Cour de Révision, dis traits," &c. (L'Honorable Juge Torrance ne concourt pas dans ce jugement.)

MONK, J. (*diss.*), was inclined to think that Beaudoin was acting as *prête-nom* for the Bank. He alleged in the mortgage that it was given for money lent, but his own evidence showed that this was not true. Looking at all the circumstances of the case, his honor was of opinion that the judgment of Mr. Justice Mackay should be confirmed, and that the judgment rendered in Review should be reversed.

Sir A. A. DONOH, C.J. Beaudoin was agent of La Banque de St. Jean at West Farnham, and afterwards acting-cashier at St. John's. He made advances for the Bank to one Trudeau, and at the date of the mortgage in question, Oct. 8, 1877, Trudeau was indebted to the Bank in a considerable sum. Trudeau failed in January, 1878. The Bank produced four notes as part of their claim, and received a dividend on them. When the real estate of Trudeau was sold, Beaudoin was collocated for his mortgage. On the day that the dividend became due, Beaudoin applied to the assignee for his money. The assignee, who had collocated him upon the certificate of the Registrar, asked him for a statement of claim. The next day Beaudoin sent him a copy of the mortgage, with the four notes, on which the Bank had already filed a claim and received a dividend. The assignee thereupon asked leave to contest the collocation. The delay for contesting the dividend sheet had elapsed; but one of the Judges of the Superior Court granted leave to contest the collocation, and this was one of the grounds urged by Beaudoin for having the appeal rejected, it

being contended that, after the delay had expired, the Judge had no discretion or right to allow the contestation of his claim. The assignee alleged that no consideration was given for the mortgage in question. Upon that the parties went to evidence, and it appeared that Beaudoin endorsed the notes of Trudeau and took this mortgage to protect himself. The circumstances were such as would naturally excite suspicion, but the majority of the Court do not find actual proof that Beaudoin is the *prête-nom* of the Bank. It is said that the Bank has already ranked for these notes, and that if Beaudoin is allowed to claim on his mortgage there would be double ranking. The Court holds that Beaudoin had a right to take the mortgage for his endorsements, but it will deduct the \$288 received by the Bank to the exoneration of Beaudoin, and the collocation will be reduced accordingly.

The judgment is as follows:—

"La Cour, etc.,

"Considérant que l'intimé Beaudoin avait le droit de prendre une garantie hypothécaire pour se protéger contre l'éventualité à laquelle il s'exposait en endossant les billets du défendeur Trudeau;

"Et considérant qu'il n'est pas prouvé que le dit intimé ait agi comme le prête-nom de la Banque St. Jean, en prenant cette garantie hypothécaire;

"Et considérant que le montant des billets endossés par le dit intimé est de la somme de \$962.03, et que la Banque de St. Jean, porteur des dits billets lors de la faillite du dit défendeur Trudeau, a déjà reçu un dividende, sur le montant des dits billets, de \$288.60, ce qui ne laisse qu'une balance de \$673.43 sur le montant des dits billets pour lesquels la dite garantie hypothécaire a été donné;

"Et considérant que le dit intimé n'aurait dû être colloqué que pour la dite somme de \$673.43, balance due sur le montant des dits billets, et non pour la somme de \$870;

"Et considérant qu'il y a erreur dans le jugement rendu par les trois juges de la Cour Supérieure siégeant en révision le 29 Décembre, 1879;

"Cette Cour casse et annule le dit jugement, &c., et réduit la collocation de l'intimé à la dite somme de \$673.43; et attendu que c'est par la faute de l'intimé que cette contestation a eu