

doubt that he assented to and ratified what had been done. Mr. Baker in his evidence stated that Bartley was perfectly aware that the entries were made or intended to be made in their books, that the whole matter was discussed with him, that the intention was that Hamilton was to be paid off by Mulholland and Baker, and that they were to be subrogated in all Hamilton's rights which were to be kept alive. Besides all this evidence there is the recital in the deed of June 1877. It is there said, "And whereas the said parties of the second part" (that is, Mulholland and Baker) "as such sureties have at divers times paid instalments of the interest on the said debt, and finally paid the entire principal thereof to the said party of the first part," (that is Hamilton,) "upon the agreement, and with the understanding that they should receive a subrogation of his rights under the said deed." Bartley personally intervened and signed that deed, and declared and acknowledged himself content and satisfied therewith, and to have been well and sufficiently signified in the premises. All this was done and passed in the office and in the presence of Hunter, a public notary, who signed the deed, and certified that the same had been duly read in his presence. The deed seems to have been an authentic document within the meaning of Article 1207 of the Civil Code, and not having been contradicted or set aside as false upon an improbation, it may be a question whether, according to Article 1210 of the Civil Code, it did not make complete proof between the parties to it and their legal representatives of the facts mentioned in the recital. It is not necessary to hold that it amounted to complete proof. It is sufficient to say that it was strong evidence against Bartley, and in the absence of fraud or collusion, of which there was no suggestion or proof, it was also evidence against the appellants. There was no evidence to show that Bartley was insolvent at the time when he intervened and signed the deed, or that at that time any of the debts due by him at the time he became insolvent had been contracted.

It was contended that any admission made by Bartley after the mortgage was paid off could not affect the question of subrogation, and that if the \$11,613.07 were really paid by him and not by Mulholland and Baker, no sub-

sequent admission or ratification by him could convert a discharge into a subrogation. That contention may be admitted to be correct, upon the hypothesis that the amount was really paid by him; but his admissions, made without fraud or collusion, before he became insolvent, are evidence against him and the inspectors of the estate of what the real transaction was at the time when it took place.

Their Lordships concur with the majority of the Judges of the Court of Review and of those of the Queen's Bench, that the cheque was made over by the insolvent to Mulholland and Baker towards the discharge of a larger amount due from him to them, and that the cheque having become their property, they applied it in discharge of the liability which they, as sureties for the insolvent, had contracted with Hamilton.

Their Lordships are clearly of opinion that the deed of 23rd June 1877 operated as a transfer to the Respondent of the rights to which Mulholland and Baker were entitled under the subrogation, and that it vested in him the right to the principal sum of \$20,700 paid on the 17th of March 1876 by Mulholland and Baker to Hamilton for principal and interest, and to the sum of \$2,250 due on account of the instalments of interest previously paid by them, the two sums making together the sum of \$22,950.

For the reasons above given, their Lordships are of opinion that the Court of Review was right in rejecting the contestation, and that the Court of Queen's Bench was right in affirming the judgment of the Court of Review.

They will, therefore, humbly advise Her Majesty to affirm the judgment of the Court of Queen's Bench, and to order that the claim of the Respondent be admitted for the full amount of \$22,950, and interest as claimed.

The Appellants must pay the costs of this appeal.

COURT OF QUEEN'S BENCH.

MONTREAL, June 14, 1881.

DORION, C.J., MONK, RAMSAY, TESSIER, and
CROSS, JJ.

REGINA V. KAYLOR.

Abduction—Proof of Woman's Interest in Property—32-33 Vict. c. 20, s. 54.