

Judgment in favour of the plaintiffs against the defendant William J. Usher had been given on 26th January, 1909.

MULOCK, C.J.:—At the close of the argument of this case yesterday, it was urged by counsel for plaintiffs that judgment be reserved until the Supreme Court delivered judgment in *Stuart v. Bank of Montreal*.* Having carefully considered this suggestion, I have reached the conclusion that the law involved in this case is fully covered by authorities, and that no useful purpose would be served by me withholding judgment. I will, therefore, now dispose of the case.

The action is brought upon a promissory note dated 16th December, 1907, made by the defendants, husband and wife, for \$2,439, payable on demand, to the plaintiffs or order.

It appears that the husband was liable to the plaintiffs on a note made by one Pepper, and was also indebted to them in other amounts. Pepper absconded, and the husband desired to get possession of the Pepper note, and made application therefor to the bank. The manager agreed to deliver the note to the husband, if he would procure and bring to the bank the note of himself and his wife covering the total indebtedness and liability of the husband to the bank, and also a trifling sum of about \$20 owing by the wife herself. The husband agreed with the manager to endeavour to procure his wife's signature, and thereupon the manager prepared a note dated 17th November, 1907, payable at the expiration of one month, for \$2,439, being the amount of the husband's indebtedness and liability, and including the trifling sum owing by the wife. This note he handed to the husband for the purpose of his taking it to the wife for her signature. Thereafter the husband returned this note to the bank, signed by himself, and purporting to be also signed by the wife, but she has no recollection of having signed it. She had, however, been in the habit of signing notes at her husband's request, and it may be assumed that she signed this note. It was not paid at maturity, and the banker says it was renewed, and that he repeated the former pro-

*The decision of the Court of Appeal in that case is reported in 12 O. W. R. 958, 17 O. L. R. 436. Judgment was given by the Supreme Court of Canada on the 5th April, 1909, allowing the appeal of the plaintiff.