

A STRANGE MORTGAGE CASE.

One of the most remarkable cases relating to the legal position of mortgagor and mortgagee ever decided by a court, or courts was terminated by a judgment given by the Judicial Committee of the Privy Council on 3rd inst.

The merits of the suit turned upon the validity of a mortgage for \$4,000 executed by Mrs. Corriveau in favour of the Trust & Loan Company of Canada, which had advanced her that amount on her own property. The facts of the case are few and were not contested. The issue was strictly a legal question. Briefly stated the facts are as follows: Mrs. Corriveau before her marriage owned certain property at Iberville. Under the law of this province this property was absolutely her own separate estate after marriage.

On the 11th March, 1897, Mr. and Mrs. Corriveau went to a notary's office, and she then executed a formal mortgage (hypothec) of her property for \$4,000 advanced to her. This mortgage was in proper form: it was made before a notary and was duly signed and attested. It was made by the wife with the authority of her husband, and he signed it as required by section 177 of the code. It was also duly registered. The \$4,000 were paid to Mrs. Corriveau by the plaintiffs by a cheque drawn on the Bank of Montreal and made payable to her order. The cheque was given to her; she endorsed it and gave it to her husband, who put it into the Bank of Quebec to the credit of his account there, and he drew upon this account by cheques signed by himself in the ordinary way. Mrs. Corriveau had no banking account herself, and it is plain that, although she had the cheque, she did not have the money or the benefit of it, unless she got it afterwards from her husband, of which there is no proof.

The loan was entered in the plaintiffs' books as a loan to her. As interest on it became due she was regularly debited in their books with it, and she was credited in them with payment of the interest. But the interest was, in fact, paid by her husband by his own cheques, and receipts made out to her were sent to him by the plaintiffs. She never saw these books or entries. She left all her business matters to her husband.

The case came, in the first instance, before Mr. Justice Doherty, who came to the conclusion that the mortgage was given by Mrs. Corriveau for the benefit of her husband, and he declared the mortgage invalid accordingly. From this decision the plaintiffs appealed to the Court of King's Bench. The members of that court, by a majority of three to two, agreed with Mr. Justice Doherty, and dismissed the appeal. The two dissentient judges did not believe Mr. Corriveau's evidence, nor that of his wife; and were of opinion that the mortgage deed and receipt by Mrs. Corriveau of the cheque for the amount borrowed were enough to establish the plaintiffs' case in the absence of satisfactory proof that she did not in fact get the benefit of the money.

The law applicable to the case is contained in article 1301 of the Civil Code of Lower Canada, which in English reads as follows:

"A wife cannot bind herself either with or for her husband otherwise than as being common as to property; any such obligation contracted by her in

any other quality is void and of no effect."

The expression "in any other quality" is explained by turning to the French version; in that version the words "otherwise than as being common as to property" are rendered "qu'en qualité de commune." There is no question here as to common property. The property dealt with was the wife's separate property, and this she can dispose of with the concurrence of her husband (see article 177 of the code). But after marriage neither husband nor wife can dispose of their respective properties for the benefit of the other except in a few specified cases which may be disregarded on the present occasion (see article 1265).

The point then at issue was, had the wife a right to mortgage her own separate property for the benefit of the husband? The law appears to have been framed to prevent a wife dispossessing herself of her own property in order to benefit her husband. This intention of the law is in some respects, commendable, but, as this case shows, it is liable to proceedings that inflict gross injustice, upon those who are not acquainted with, or who mis-read the law when advancing money on the security of a married woman's property in which her husband has no legal interest, and over which he has no legal control.

The law being as above stated, and the facts as already set forth, their lordships of the Privy Council were unable to differ from the decision of Judge Doherty, which was appealed from. Their judgment reads:

"Taking the whole of the evidence, their lordships cannot avoid coming to the conclusion that the security in question was in fact given by Mrs. Corriveau for her husband, although the plaintiffs did not know it. Such being the case, the security is void. Their lordships will, therefore, humbly advise His Majesty to dismiss this appeal, and the appellants must pay the costs of it."

It remains to be seen what course will be adopted by the Corriveaus. Will they ignore the moral obligation they remain under to repay the Trust & Loan Company the \$4,000 they received from it? The merely "legal" obligation to repay this borrowed money they have been discharged from by their own action in doing what is declared to be an illegal act, from the results of which they have profited to the extent of \$4,000.

It reminds us of Mr. Waller's advice, "Beware of Widows, Samuel!" In this Province, having financial relations with the property of a married woman is a risky business.

AT LITTLE FALLS, N.Y., a rate war is reported by "The Standard," to be in progress, and dwellings are being written at ten cents for three years, and manufacturing risks at one-third the tariff rate. Norris & Co., agents of the Royal, Home, and London & Lancashire, are leading the fight, offering to give the lowest rates obtainable, telling the public that it will pay to cancel policies and take new ones. They also agree to attach a non-cancellation agreement to every policy issued. "It is not, nor can it come to good."