

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of La Banque D'Hochelaga v. Archibald W. Stevenson es qual, from the Court of Queen's Bench for Lower Canada, Province of Quebec (Appeal Side); delivered 28th July 1900.*

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Present at the Hearing :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD LINDLEY.

SIR RICHARD COUCH.

SIR HENRY STRONG.

[*Delivered by Lord Macnaghten.*]

In the distribution of the estate of one Lefebvre an insolvent proprietor the Appellants the Bank of Hochelaga in right of a firm of builders and suppliers of materials claim priority over the insolvent's general creditors. Their claim is put in two ways. They rely in the first place on the transfer of a builder's privilege registered against the insolvent's immovables. In the event of that claim failing they fall back on the hypothecary privilege conferred on suppliers of materials by the articles of the Civil Code now in force.

In order to make good their claim the Bank must show that the privilege claimed whether it be the builder's privilege or the hypothecary privilege was in existence at the commencement of the insolvency. The insolvency in the present case occurred within the period of two years but after the expiration of one year from the date of registration.

The original claim on the part of the Bank was under the builder's privilege. The claim to

an hypothecary privilege was put forward in the course of the litigation. The Superior Court refused to allow an amendment proposed to be made in order to bring this claim upon the Record. But the claim to an hypothecary privilege as well as the claim to the builder's privilege was considered and rejected both by the Superior Court and by the Court of Queen's Bench on appeal. Their Lordships entirely concur in the judgment of the Court of Queen's Bench delivered by Lacoste C.J. who adopted the reasoning of the Superior Court.

The original claim was founded on the articles of the Civil Code as amended by 57 Vict. chap. 46. That statute which came into force in March 1894 gave a right of preference to the supplier of materials as well as to the builder and conferred a privilege for two years from the date of registration. It was however repealed by 59 Vict. chap. 42 which came into force on the 21st of February 1896. The latter statute omitted suppliers of materials from the list of privileged creditors and reduced the builder's privilege to the period of one year from the date of registration but it gave the supplier of materials on compliance with certain formalities an hypothecary privilege.

In the present case the work was done and the materials supplied while the Act of 57 Vict. was in force. But the required memorial or bordereau was not registered until the 16th of March 1896 and it is to be observed that the amount mentioned in the memorial was a lump sum. The memorial does not distinguish between the amount due for work done and the amount due for materials supplied.

The Bank claims that inasmuch as the work was done and the materials supplied while the earlier Act was in force the privilege must be deemed to last for two years. But obviously this is not the case. When the memorial was

registered the only articles under which registration could be effected were the articles of the Code as amended by the Act of 59 Vict. Registration under those articles confers a privilege but a privilege limited to one year from the date of registration.

The claim to an hypothecary privilege under the Act 59 Vict., seems to be equally without foundation. It is not alleged that the claimants did in fact comply with the formalities required by the articles of the Civil Code as amended by the Act 59 Vict. They seek to rely upon an admission made in the course of the proceedings to the effect that all the formalities required were complied with. But this admission was made when the only question between the parties was as to the duration of the builder's privilege. No claim to an hypothecary privilege had been advanced at that time. In the next place they say that it was impossible for them to comply with the prescribed formalities because the materials were supplied directly to the proprietor. Whatever the reason for non-compliance may have been Article 2013 L introduced by the Act 59 Vict. makes it perfectly clear that the hypothecary privilege conferred on suppliers of materials only arises on notice being given to the proprietor in virtue of Article 2013 G and registered according to Article 2103. It lapses unless the prescribed legal proceedings are taken within three months from the date of the notice.

The claim of the Bank therefore fails and their Lordships will humbly advise her Majesty that the Appeal ought to be dismissed.

The Appellants will pay the costs of the Appeal.

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