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STERLING WOOLLENS & SILKS CO. }
 LTD. (DEFENDANT) } APPELLANT;

AND

DAME SARA LASHINSKY ET VIR }
 (PLAINTIFF) } RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,
 PROVINCE OF QUEBEC

*Husband and wife—Incorporated company formed exclusively of both—
 Hypothec given by wife as security for company's debts—Validity—
 Husband's shares fully paid up—Allegation of fraud by the wife—
 Immaterial whether husband has more or less shares than the wife—
 Article 1301 C.C.*

Where husband and wife are shareholders in an incorporated company, in this instance formed exclusively of both of them, the wife cannot guarantee the debts of the company, even if her husband's shares were fully paid up, because by so doing she obliges herself for her husband in contravention of article 1301 C.C. Such obligation is an absolute nullity, or, in the words of the article, "is void and of no effect."

Allegation of fraud on the part of the wife has no bearing in such a case. Article 1301 C.C. is for the purpose of protecting the wife, has always been regarded as a matter of public order and must receive its application under all circumstances.

*PRESENT:—Rinfret C.J. and Kerwin, Hudson, Taschereau and Rand JJ.

In the present case, the deed of hypothec subscribed to by the wife was given not for her own benefit but for the security of the company's debts. It is immaterial whether the husband held more or less shares than the wife; it is sufficient that he held a substantial interest in the company.

Trust & Loan Company of Canada ([1904] A.C. 94) and *La Banque Canadienne Nationale v. Audet* ([1931] S.C.R. 293) foll.

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APPEAL from a judgment of the Court of King's Bench, appeal side, province of Quebec, reversing the judgment of the Superior Court, Louis Cousineau J. and maintaining the respondent's action.

The Superior Court dismissed an action taken by the respondent to declare null and void an hypothec for \$7,500 given by her to the appellant company as security for the payment of merchandise to be shipped by the latter to an incorporated company formed exclusively of the wife and the husband, on the ground that the bond given by the wife was contrary to the provisions of article 1301 C.C.

The appellate court reversed that judgment; and the Supreme Court of Canada after hearing counsel for the appellant, dismissed the appeal, without calling on counsel for the respondent.

M. M. Sperber K.C. for the appellant.

M. Gameraff K.C. and *S. Fenster* for the respondent.

The judgment of the Court was delivered by

THE CHIEF JUSTICE:—This is another case under article 1301 of the Civil Code. This Court has already rendered many decisions on the interpretation of that article; but the ruling case remains that of *The Trust and Loan Co. of Canada v. Gauthier* (1). The several judgments rendered in the courts of Canada since then were nothing else than the application of the *Trust & Loan* judgment (1) to the particular facts in each instance.

In *The Trust and Loan* case (1), Lord Lindley, delivering the judgment of their Lordships, said, among other things, (p. 100):—

Except in dealing with their common property, she (the wife) is not to bind herself with him, (the husband), i.e., she is not to join him in any obligation which affects him.

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And further on he says:—

What then is meant by "for him"? Does it mean jointly with him, or as his surety and nothing more? or does it mean for him generally, i.e. in any way for his benefit.

And at p. 101 his Lordship gives the answer:—

Rinfret C.J.

Their Lordships gather from the decisions referred to in the argument and in the published commentaries (6 Mignault 189, 191) on the Civil Code that the words "for her husband" are now judicially held to mean generally in any way for his purposes as distinguished from those of his wife; and that ignorance on the part of her obligee (créancier) cannot avail him if it is proved that she in fact bound herself for her husband. These conclusions are in their Lordship's opinion sound and in accordance with the language of art. 1301 and with its evident object.

We do not want to associate ourselves with many of the pronouncements in the formal judgment *a quo*. As matter of fact, the Court of King's Bench (Appeal Side) divided three judges to two in this matter, and what was handed down as the judgment of the majority is really made up in the main of the reasons of one of the judges who formed the majority. It does not express the views of the two other judges and in some "considérants" even it expresses the contrary of what those two judges said.

We agree with St. Germain and Barclay JJ. that the case of *La Banque Canadienne Nationale v. Audet* (1) is in point to the effect that where husband and wife are both shareholders in a company, the wife cannot guarantee the debts of that company, even if her husband's shares were fully paid up, because by so doing she obliges herself for her husband.

This is applying strictly the pronouncement of Lord Lindley on behalf of the Judicial Committee in the *Trust and Loan* case (2) that article 1301 of the Civil Code is now judicially held to mean that the wife cannot bind herself "for her husband" and that those words "are now judicially held to mean generally in any way for his purposes * * *".

This language renders it necessary to distinguish between obligations of a wife for her husband and obligations contracted for her. The object of the article is evidently to protect her against her husband and against herself. (Lord Lindley, at p. 100) (2).

(1) [1931] S.C.R. 293.

(2) [1904] A.C. 94.

In these circumstances the question of fraud does not enter into the discussion. The article is for the purpose of protecting the wife. It has always been regarded as a matter of public order and it must receive its application under all circumstances. The obligation which the wife contracts in contravention of article 1301 C.C. is an absolute nullity. In the wording of the article it "is void and of no effect".

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Since the judgment of the Privy Council in *The Trust and Loan* case (1), an amendment has been introduced by the Legislature adding to the article the words "saving the rights of creditors who contract in good faith".

In *La Banque Canadienne Nationale v. Audet* (2), this Court expressed its views upon the effect of that amendment. Applying what was said in that case on that point we must say that, in the premises, the amendment cannot help the appellant. The bond subscribed to by the wife was given not for her own benefit but for the security of the company's debts. That company was formed exclusively of the wife and the husband. The only other shareholder held one share merely for the purpose of qualifying a third person according to the requirements of the *Quebec Company Law*. It is immaterial whether the husband held more shares than the wife, as in the *Audet* case (2), or whether he held a lesser number of shares than she did. It is sufficient that he held a substantial interest in the company. The wife, guaranteeing the company under such circumstances, clearly came within the wording of the article as interpreted by this Court in *La Banque Canadienne Nationale v. Audet* (2) and by the Judicial Committee in *The Trust and Loan Co. v. Gauthier* (1).

The appeal must be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Sperber, Godine & Cross*.

Solicitors for the respondents: *Gameroff & Fenster*.

(1) [1904] A.C. 94.

(2) [1931] S.C.R. 293, at 311,
 312, 313.