

1928

FAUTEUX *v.* MASSICOTTE*Nov. 22.
* " 28.ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,
PROVINCE OF QUEBEC*Notary—Agency—Representations to obtain renunciation to a privilege—
Unpaid creditor—Liability of the notary*

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec (1), reversing the judgment of the trial judge, P. Demers J., and dismissing the appellants' action.

The appellants are contracting plumbers and their action is to recover balance of the amount due for work done on a building erected by a third party then insolvent, on the ground that the defendant respondent, a notary, had promised to pay that amount and, alternatively, on the ground that he had induced the appellants to continue the work and not to register any privilege, on the representation that he had in hand sufficient moneys to settle appellants' claim.

The Supreme Court maintained the appellants' action, but that judgment was reversed on appeal.

The Court of King's Bench held that, under the circumstances of this case, a notary who informs a contractor that moneys had been deposited in his hands by an hypothecary lender and transmits to him the terms of the instructions given by the lender to employ those moneys for the payment of the contractors' claims does not incur any liability, either as personal debtor or as surety for the owner of the building.

On the appeal to the Supreme Court of Canada after hearing counsel for the appellants and the respondent, judgment was delivered orally dismissing the appeal with costs for the reasons assigned by Mr. Justice Hall in the Court of King's Bench.

Appeal dismissed with costs.

J. C. Lamothe K.C. for the appellants.

E. Lafleur K.C. and *P. Couture K.C.* for the respondent.

*PRESENT:—Anglin C.J.C. and Mignault, Newcombe, Rinfret and Lamont JJ.