

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of The  
Bank of Toronto v. The St. Lawrence Fire  
Insurance Company, from the Court of King's  
Bench for the Province of Quebec, delivered  
the 19th November 1902.*

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Present at the Hearing :

THE LORD CHANCELLOR.

LORD MACNAGHTEN.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

[*Delivered by Lord Macnaghten.*]

The John Eaton Company Limited were the owners of a large dry goods store in the City of Toronto. Their stock was insured in a number of offices and among others in the office of the St. Lawrence Fire Insurance Company of Montreal to the amount of \$2,500.

On the 20th of May 1897 the store with its contents was entirely destroyed by fire. The value of the goods burnt exceeded the aggregate amount of the insurances upon them.

It is not disputed now that the Respondent Company would have been liable for the sum intended to be secured by the policy effected in their office, if the interest in that policy had remained vested in the John Eaton Company.

It appears however that the John Eaton Company were under large advances to the Bank of Toronto and that they had given the Bank an undertaking that in the event of their goods being damaged by fire they would hold the

policy moneys in trust for the Bank and would if required assign all the policies to them.

On the 22nd of May 1897, two days after the fire, the John Eaton Company assigned to the Bank their interest in all the insurances on their stock including the moneys payable under the policy effected with the St. Lawrence Company.

Notice of the assignment was given to the several offices concerned and due proof of loss was furnished. The Respondent Company was requested to concur with the other offices in the adjustment of the claim. The solicitors of the Bank wrote several letters to the Respondent Company and pressed for an answer to their applications or at least for an acknowledgment of their communications. The Respondent Company however systematically disregarded all communications whether oral or written and did not answer or acknowledge a single letter written to them on behalf of the Bank, a course of conduct so little in keeping with the usages of business men that one of the learned Judges in the Court of King's Bench whose view of the facts is accepted as correct by all his colleagues did not hesitate to describe it as being "to say the least rather devious."

By the terms of the policy all claims under it were to be barred at the expiration of six months. So in November 1897, when the period was just running out, the Bank served the Respondent Company with a formal notice of the assignment and at the same time furnished them with a copy of the assignment itself. Later on the same day this Action was brought.

The Respondent Company set up several defences of which one and one only was seriously argued at the Bar.

It was strenuously contended, and the contention had already found favour with the Superior Court and a majority of the Court of

King's Bench that the Action must fail because the Bank had not duly made "signification" as required by the Civil Code "of the act of sale," which gave rise to their claim. It was not disputed that there had been a transfer of the debt, that notice of the transfer had been given to the Respondent Company and that a document which purported to be and was in fact a copy of the transfer had been furnished to them. But they maintained that "signification" must be made by a Notary and that the copy ought to have been authenticated or certified, and that for want of these formalities the notification of the transfer was without legal effect. On this point their Lordships have had the advantage of considering the reasons given by Wurtel J. for dissenting from the majority of the Court. His Judgment, in which Hall J. concurred, seems to their Lordships to be a careful and accurate exposition of the law, and their Lordships are satisfied to adopt it as the basis of their Judgment. It will therefore not be necessary for them to do more than state very briefly the grounds on which they think the decision under appeal ought to be reversed.

It appears to their Lordships that the question must depend simply upon the provisions of the Civil Code without introducing or importing any requirements which, though necessary under the custom of Paris or under modern French law, are not found in the Code as it stands. Now the provisions of the Code as regards the sale of debts are contained in Articles 1570 and 1571. Article 1570 provides that "the sale of debts  
 " . . . . is perfected between the seller and  
 " the buyer by the completion of the title if  
 " authentic or the delivery of it if under private  
 " signature." Then Article 1571 declares that  
 " the buyer has no possession available against  
 " third persons until signification of the act of

"sale has been made and a copy of it delivered to the debtor," except in case the transfer is accepted by the debtor himself as mentioned in Article 1571.

There is nothing in the Civil Code to show that the intervention of a Notary is required. It is certainly not prescribed in terms, nor is there in their Lordships' opinion any room for implication in this matter.

The view of Wurtelle J., in which their Lordships concur, is confirmed by the provisions of Article 1571A, added by the Revised Statutes of Quebec (1888) which explains how "the signification of the sale required by Article 1571" may be effected whenever "the debtor has left or never had his domicile in the Province." It receives further confirmation from the exceptional provisions made in the Revised Statutes "for the assignment and transfer of consolidated rents replacing seignorial dues." Those provisions which are embodied in Article 5610 do require "a notarial act in authentic form." Apparently this requirement would have been unnecessary if a notarial act had been the universal rule.

Their Lordships do not stop to inquire whether the debtor is a "third person" within the meaning of Article 1571, as seems to have been assumed in the Courts below, and is stated expressly by Sir A. Lacoste C.J. The question is not material in the present case. It appears however to their Lordships that if the point should hereafter arise, it would require further consideration.

There is one point which their Lordships cannot leave unnoticed. Some of the learned Judges who have taken part in this case express a strong opinion that it is not competent for the assignee of a debt to bring an action for the purpose of enforcing his claim against the debtor

until "signification" of the act of sale has been made and a copy of it delivered to the debtor. This view is in accordance with a recent ruling of the Supreme Court (*Murphy v. Bury*, 1895, 24 Canada, Supreme Court Reports, p. 668) though until that decision was pronounced the general opinion seems to have been the other way (See *Aylwin v. Judah* 9 Lower Canada Jurist 179 *Martin v. Côté* 1 Lower Canada Rep. 239 *Quinn v. Atcheson* 4 Lower Canada Rep. 378.) It appears to their Lordships that the institution of an action against the debtor to recover the debt is of itself a sufficient signification of the act of sale and their Lordships agree with Wurtel J. in thinking that there is nothing in the Code which requires the signification of the act of sale and the delivery of a copy of it to the debtor to be made at one and the same time.

For these reasons their Lordships are of opinion that the Judgment under appeal must be reversed and that an Order should be pronounced condemning the Respondent Company to pay to the Bank the amount secured by the policy in question with interest and costs in the Superior Court and the Court of King's Bench.

Their Lordships will humbly advise His Majesty accordingly.

The Respondent Company will pay the costs of the Appeal.

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