

DAME JUSTINE DELPHINE DAN- }
 SEREAU, (RESPONDENT BY REPRIS }
 D'INSTANCE IN THE COURT OF } APPELLANT; 1890
 QUEEN'S BENCH)..... } *May 14.
*Dec. 11.

AND

JEAN-BAPTISTE ST. LOUIS *et al.*, }
 (APPELLANTS IN THE COURT OF } RESPONDENTS.
 QUEEN'S BENCH)..... }

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR
 LOWER CANADA, (APPEAL SIDE).

Election law—38 Vic., (Q) s. 266 ; R.S.Q. art. 425—*Promissory note*.

S. (appellant's husband) brought an action against St. L. Bros. on a promissory note for \$4,000, a renewal of a note for same amount made by S., endorsed by him and handed to St. L. Bros., alleging that the original note had been made and discounted for the accommodation of St. L. Bro. The evidence showed that the proceeds of the note were paid over to one D., as agent for S., to be used as a portion of a provincial election fund controlled by S.

Held : affirming the judgment of the court below, that the plaintiff could not recover, even assuming a promise to pay on the part of St. L. Bros., the transaction being illegal under 38 Vic. c. 7 sec. 266 (P.Q.), now R. S. Q., art. 425, which makes void any contract, promise or undertaking, in any way relating to an election under the said act.

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (Appeal Side) (1) reversing the judgment of the Superior Court.

The facts and pleadings are fully stated in the judgment of Mr. Justice Cross of the Queen's Bench as follows :—

By this action instituted, 29th of May 1883, L. A. Sénécal claims to recover from St. Louis Brothers,

*PRESENT : Sir W. J. Ritchie C.J., and Strong, Fournier, Gwynne and Patterson JJ.

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 v. July 1882, made and signed by L. A. Sénécal himself,  
 ST. LOUIS. payable to his own order, and endorsed by him, alleging  
 ——— in his declaration that it was (without his receiving  
 any consideration or value) loaned by him as an  
 accommodation to St. Louis Brothers who endorsed and  
 discounted it for their own profit, appropriating to  
 themselves the proceeds thereof, and undertaking to  
 pay it at maturity, having recognized their liability to  
 do so, more especially to one J. M. Dufresne, and giving  
 their check for the amount thereof, on the 27th of July  
 1882, signed by Emmanuel St. Louis, one of them.

To this action, the Brothers St. Louis pleaded, denying generally the plaintiff's allegations, and answering that it was untrue that the note in question, had been loaned to them, or given for their accommodation, or without consideration for it ; that on the day it was transferred to them for their endorsement, it was L. A. Sénécal's own debt ; that they, St. Louis Brothers, got no value for it, but only endorsed it for the benefit and advantage of him, L. A. Sénécal, who got the proceeds thereof, when discounted ; that the cheque was the personal affair of Emmanuel St. Louis, one of the partners, and was no acknowledgment of indebtedness by them who owed L. A. Sénécal nothing and got no consideration for the cheque. Emmanuel St. Louis was wholly unauthorized to bind the partnership, which never acknowledged any liability or in any way authorized Emmanuel St. Louis to bind the firm.

That L. A. Sénécal produced as exhibits, as well the promissory note in question, as a cheque for \$4,000, on the bank of Hôchelaga, dated the 27th July, 1882, payable to the order of J. M. Dufresne, signed E. St. Louis, with a protest at the instance of L. A. Sénécal, dated the 13th September, 1883.

L. A. Sénécal claimed that had rendered services for the amount of the note to St. Louis Brothers, in procuring for them payment of their claim against the Provincial Government; 2nd. That is as settled for them a dispute they had with H. J. Beemer, contractor, getting the latter to retire from a partnership which had existed between them and J. H. Beemer, and paying for them \$4,000, as a consideration for J. H. Beemer retiring from the partnership; 3rd. That the note was given to pay a subscription by the St. Louis Brothers to an election fund of which L. A. Sénécal had the administration.

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The first two grounds were unsupported by the evidence; as to the second, it was proved that the \$4,000 given to H. J. Beemer, as a bonus, in consideration for his retiring from a contract, was provided for by St. Louis Brothers themselves.

With regard to the third ground, the two brothers, partners of the firm of St. Louis & Frère, were both examined; neither of them admitted that the original note or renewals, were either of them, given for their accommodation; on the contrary, they persist in saying, that what they had to do with the transaction was for the accommodation of L. A. Sénécal, Jean-Baptiste St. Louis explains that he had little to do with the transaction, somewhat when the original note was delivered to him by Dufresne, he took it over to the Hochelaga Bank, returned with the proceeds which he handed to J. M. Dufresne for L. A. Sénécal, or rather laid the money on the table, so that he might get it. Emmanuel St. Louis, who seems to have been the negotiator, corroborated his brother's story about the discount, and stated that he handed the money to J. M. Dufresne for L. A. Sénécal. He admitted that he signed the cheque for \$4,000, but denied that he had anything to do with the transaction involved in this

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suit. He explained that the \$4,000 was to be given to L. A. Sénécal, as a bonus in consideration of his procuring to St. Louis Brothers the payment, by the Government, of a claim for \$25,575, which they were then making for damages and extras, under their contract with the Government for the construction of the workshops of the North Shore Railway, L. A. Sénécal being at the time Government superintendent of the said railway, and acting as referee to whom the Government had submitted the claim of the St. Louis Brothers, for his report. The cheque, he says, was his personal affair, and in no way bound the firm, from whom he had no authority in the matter, and allowed to the extent of \$19,000, he did not consider himself bound to pay the cheque, his promise being conditional that the claim should be allowed and paid in full. In this respect he is to some extent corroborated by J. M. Dufresne.

J. M. Dufresne who acted as intermediary and agent of L. A. Sénécal, explained that the note sued on was a second renewal of a note of L. A. Sénécal, for a like amount of date 30th November, 1881, which was made and discounted to raise funds to be employed in the general elections of 1881, then about to be held to choose members of the Provincial Parliament, in which election L. A. Sénécal was acting and deeply interested for the Government, and probably in regard to the sale of the North Shore Railway then being agitated. J. M. Dufresne says, that at his solicitation, the St. Louis Brothers agreed to subscribe to the electoral fund, to the extent of \$4,000, to be paid when they should receive their money from the Government, and should be indemnified for their damages and losses; they said, that is Emmanuel St Louis said at the time, that they could not make that subscription. unless the Government adopted their account for

damages and extras. L. A. Sénécal was at the time 1890.
 superintendent and controlled everything. These ^{DANSEREAU}
 negotiations were with Emmanuel St. Louis. ^{v.}
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Other witnesses were examined to show that Emmanuel St. Louis acknowledged a liability and would have been willing to pay his half of the amount, if his brother had been willing to contribute his half share.

F. X. Archambault Q. C. for appellant.

Geoffrion Q. C. and *Ouimet* Q. C. for respondent.

Sir W. J. RITCHIE C. J.—After reading the above statement of the facts of the case, proceeded as follows :

I think this appeal should be dismissed. The plaintiff has shown no legal claim against the defendants ; the original transaction was in my opinion unquestionably void under 38 Vic. c. 7, sec. 266, now reproduced in article 425 R. S. Q. Province of Quebec, the note having been discounted for election purposes and the proceeds handed over to Dufresne for Sénécal to be used as a portion of an election fund controlled by him.

As to the check the defendants got no consideration for it, and the parties to it do not appear to have in any way authorised its being given by Emanuel St. Louis, or to have acknowledged any liability on it, and under any circumstances whether the note or check was given to Dufresne for Sénécal to induce him as representing the Government to secure the settlement of their claim for damages against the Government or as a contribution to an election fund, it was equally void in law.

I think this appeal should be dismissed.

STRONG J.—It is clear upon the evidence that the original note, of which that of the 7th of March, 1882, which is the basis of the action, was a second renewal was

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made and endorsed by L. A. Sénécal and handed to the respondents in order that they might get it discounted and pay over the proceeds to Sénécal. That they did get the note discounted and did hand over the proceeds to Dufresne for the benefit of and as agent for Sénécal for the purpose of being used for illegal purposes at a Provincial Election is also established. It also appears that if the respondents did make any promise to Senécal to indemnify him against the note it was so made by way of subscription to the election fund before mentioned and was therefore illegal and void. The respondents are therefore not liable on the note, for the reason that they are not parties to it, and any promise of indemnity must fail by reason of its illegal tendency.

The question is wholly one of evidence and there is no ground whatever for in any way interfering with the judgment of the Court of Queen's Bench. The appeal must be dismissed with costs.

FOURNIER J.—I am in favor of dismissing this appeal. It is a clear case. Two parties join together to raise money for an illegal purpose, and now one of them, the maker of the note, tries to collect it from the endorser. There is an express provision of the law against such dealings.

GWYNNE, J.—It is abundantly clear that the plaintiff utterly failed to prove the allegation in the declaration essentially necessary to be proved to entitle the plaintiff to recover; that the note to recover the amount of which as having been a loan by the late Mr. Sénécal to the defendants the action was brought, and which was made by Mr. Senécal payable to his own order, or the original note, of which the one sued upon was a renewal and the proceeds of which original note

were received by Mr. Sénécal himself, was made to raise money for the accommodation of the defendants and lent to them as alleged in the declaration. Having utterly failed to establish this material allegation in the declaration the plaintiff cannot recover.

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The only connection of the defendants with the note in question appears to have been a promise made by the defendants to take up for Mr. Sénécal the note sued upon, which promise was based upon a corrupt, illegal and fraudulent consideration promised by Mr. Sénécal to be given to the defendants which, however, does not appear to have been in fact given by him. The particulars of this corrupt and illegal consideration are so well explained in the judgment of Mr. Justice Cross in the Court of Queen's Bench at Montreal in appeal that it is not necessary to repeat them. The appeal must, in my opinion, be dismissed with costs.

PATTERSON J. was also of opinion that the judgment of the court below should be affirmed.

*Appeal dismissed with costs.*

Solicitor for appellant: *F. X. Archambault.*

Solicitors for respondent: *Ouimet, Cornellier & Eymard.*