J. A. PERODEAU (DEFENDANT) ..... APPELLANT;

AND

DAME J. HAMILL AND OTHERS (PLAINTIFFS) ..... } RESPONDENTS.

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*Feb. 27.
*Mar. 27.

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

Partnership—Real or nominal—Notaries—Loss by a client—Reimbursement—Liability of partners—Joint or joint and several—Arts. 1128, 1712, 1730, 1732, 1850, 1851, 1854, 1856, 1857, 1863, 1869 C.C.

The liability of a notary practising his profession in real or nominal partnership with another notary to reimburse money of a client entrusted to the firm and converted by the latter to his own use is under article 1854 C.C. a joint liability imposing upon the former an obligation to contribute one-half of the loss, and not a joint and several liability involving an obligation for the whole.

The effect and application of articles 1730 and 1869 C.C. considered. Judgment of the Court of King's Bench (Q.R. 34 K.B. 500) varied.

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec (1), affirming the judgment of the Superior Court and maintaining the respondents' action for the full amount claimed by them.

Geoffrion K.C. and *Languedoc K.C.* for the appellant.

Laurendeau K.C. and *St. Germain K.C.* for the respondents.

The judgment of the majority of the court (Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.) was delivered by

NEWCOMBE J.—When on 28th November, 1916, the late William J. Rafferty of Montreal was confined at the Hôtel Dieu in his last illness, his wife, at his request, communicated by telephone with the firm of notaries known as Stuart, Cox, McKenna & Pérodeau, practising at Montreal, and requested Mr. McKenna of the firm to come to the hospital to transact some business for her husband. Mr. Rafferty desired to change his will and also to make provision for the immediate discharge of a balance of purchase money to the Montreal Realty Company upon a deed of sale of immovable property at the city of West-

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

(1) [1924] Q.R. 34 K.B. 500.

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mount, which was to fall due two days later. Mr. McKenna came immediately to the hospital in response to this message and he had an interview there with Mr. Rafferty and his wife, who was also representing her husband under power of attorney. At this interview Mr. McKenna received instructions to see to the discharge of Mr. Rafferty's obligation to the Montreal Realty Company. It would appear that Mr. and Mrs. Rafferty had not at the moment the information necessary to determine the precise amount which would be required, but that Mr. McKenna prepared a cheque payable to the order of his firm, Stuart, Cox, McKenna & Pérodeau, for $6,069 which Mrs. Rafferty signed in her husband's name, the cheque being drawn against the Dominion Bank in which Mr. Rafferty carried his account. Mr. McKenna explained that there was some interest or other particulars to be ascertained and adjusted, but he took away with him the cheque which he had received, and, on 1st December following, he obtained from Mrs. Rafferty a cheque for the further sum of $900 to make up the exact balance payable to the company. The body of this cheque was written by Mrs. Rafferty's daughter, under her instructions, and Mrs. Rafferty signed it in the same manner as the former cheque and sent it to Mr. McKenna; the cheque was, however, by some accident or for a reason which is not explained, made payable to the order of Stuart, Cox & McKenna. Mrs. Rafferty was asked in her re-examination at the trial how it was that the cheque was made payable to the order of the firm of Stuart, Cox & McKenna, but the court, upon the objection of defendant's counsel, would not permit the witness to answer, and so the reason for the omission of the name of Pérodeau in the later cheque is left to conjecture. Mr. McKenna indorsed both these cheques, the first in the firm name of Stuart, Cox, McKenna & Pérodeau and the second in the firm name of Stuart, Cox & McKenna, adding in each case his own individual indorsement after that of the firm. Upon these indorsements he drew the money, but he did not pay the company, neither did he give credit in the books of the firm for the money received. Mr. Rafferty died on 17th May, 1917, and Mr. McKenna died on 25th June in the same year; it was not until the day of the latter's funeral that Mrs. Rafferty ascertained that the

money had not been applied in accordance with her instructions; it was by letter from the Montreal Realty Company of 26th June, 1917, demanding payment, that she became aware that the obligation was still outstanding. The usual occurrences followed; inquiries were made; the defendant disclaimed responsibility; the Rafferty estate paid off the charge, and Mrs. Rafferty, as the executrix of her husband's will, and their two children, son and daughter, having accepted the succession, brought this action in the Superior Court against Mr. Pérodeau, claiming an account of the sum of $6,969, and in default of account to recover that amount with interest.

At the time of the transaction, the Stuart firm consisted of only two members, McKenna and Pérodeau, the appellant. Stuart and Cox were dead and McKenna and Pérodeau were carrying on under the name, style and firm of Stuart, Cox, McKenna & Pérodeau. There is room for some question as to the appellant's actual status in the firm —whether he were in reality a partner or only a nominal partner, as he claims to have been. The learned trial judge finds that

> the said firm was composed of one McKenna now deceased and the present defendant;

also that

> it appears from the evidence that the defendant and the late F. E. McKenna practised together as notaries and commissioners in the city of Montreal under the firm name of Stuart, Cox, McKenna & Pérodeau, which name was on the sign at their office door, in the telephone directory and on the ledger kept by them * * * that in the books of account indorsed with the said firm name, the entries concerning the business done by the defendant and the said McKenna N.P. were duly entered, including charges concerning administration, commissions on real estate and loan transactions as well as the notarial work performed by each of the said parties, and the bank account was kept in the said firm name, controlled by the signatures of said McKenna and defendant.

It is found that defendant's share of the profits was limited to the sum of $150 per month paid as salary. It is also found that

> the said firm name was used by McKenna and defendant in order to obtain credit.

The learned judge finds moreover that the association of the defendant with McKenna

> and their manner of carrying on business without any apparent limitations as regards each other or the public, tacitly indicated the willingness of each of them to accept and ratify the acts of the other in the transaction of the business for which they were associated and to accept responsibility therefor.

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There is some variety of opinion expressed by the learned judges of the King's Bench who heard the appeal as to whether the respondent were actually or only in name and appearance a partner. But in the result the judgment of the Court of King's Bench is founded upon the

considérant qu'il n'y a pas mal jugé dans le jugement rendu par la Cour Supérieure,

and for the purposes of this appeal it is not necessary to express any finding more definite as to whether the obligations of the respondent were more than those which are incident to nominal partnership.

The trial judge, having found for the plaintiffs, condemned the defendant to render an account to the plaintiffs within fifteen days and in default to pay the plaintiffs $6,969 with interest. The Court of King's Bench consisting of the learned Chief Justice and four of the judges was unanimous in upholding the judgment. Upon appeal to this court two principal points were submitted. First, it was said that the appellant was only a nominal partner, and therefore, under Art. 1869 C.C., liable as a partner only to third parties dealing in good faith under the belief that he was a partner, and that the evidence, far from establishing belief, pointed rather to the conclusion that neither the deceased William J. Rafferty nor his wife entertained any belief as to Pérodeau's association in the business, or as to whether he were or were not a partner. Secondly, it was argued that having regard to the true interpretation of Arts. 1854, 1856, 1712, 1732 and 1128 of the Civil Code, if the appellant be subject to any liability, it is not joint and several, and that the appellant as a partner contributes only one-half, or in equal shares with the estate of McKenna, his deceased associate.

Upon the question of liability, the evidence shows that Mr. Rafferty, when he had occasion to consult a notary, had been in the habit of going to the firm of notaries with which the appellant became or was connected. It would appear, if I do not misunderstand the proof, that Mr. Stuart, whose name stood first in the firm, died before Mr. McKenna joined it. It was some time after the death of Mr. Cox that the partnership was formed, such as it was, between Mr. McKenna and the appellant. Mr. Lonergan was a notary preceding Mr. Cox who acted in his notarial

capacity for Mr. Rafferty, but whether associated with Mr. Stuart or Mr. Cox does not appear. Then for a good many years after Mr. Lonergan's death Mr. Rafferty used occasionally to consult Mr. Cox, and after Mr. Cox's death it was his successor Mr. McKenna whom Mr. Rafferty consulted; he was the notary who, on 30th September, 1914, passed the deed of sale in the case.

Previously to the time when Mr. McKenna came to the hospital to see Mr. and Mrs. Rafferty the latter did not know either Mr. McKenna or the appellant, but she knew that their firm transacted her husband's notarial business, and she knew that the appellant was "in the firm." She gives the following answers in her cross-examination:

Q. At the date of your husband's death you did not know Mr. Pérodeau, did you?

A. I knew he was in the firm but I did not know him personally.

Q. How did you know he was in the firm?

A. I knew at the time he was taken into the firm by the talk that was going around.

Q. What do you mean by "talk that was going around"?

A. I heard people saying that Mr. Pérodeau was taken in by Mr. McKenna.

Q. Did you know Mr. McKenna at that time?

A. Only by name.

Q. As your husband's notary?

A. Yes.

Q. Prior to taking in of Mr. Pérodeau?

A. What do you mean?

Q. Did you know Mr. McKenna was your husband's notary before he took Mr. Pérodeau in?

A. Yes.

Article 1869 of the Civil Code enacts as follows:

1869. Nominal partners, and persons who give reasonable cause for the belief that they are partners, although not so in fact, are liable as such to third parties dealing in good faith under that belief.

It is admitted that the appellant was a nominal partner. The article, as I interpret it, provides in effect that nominal partners are liable as partners to third parties dealing in good faith under the belief that the nominal partners are in reality partners, and the learned counsel for the appellant very justly did not hesitate to concede that everything has happened requisite under the article to establish the appellant's liability, except proof of belief; but he contends that there is no finding, nor evidence to justify any finding, that the belief existed which is essential to establish the liability of a nominal partner. It is, I think, a just

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inference from the facts that Mr. Rafferty dealt with the firm in ordinary course, although his transactions were not unnaturally and most conveniently carried out through the agency of a single member. Indeed, by the law, notaries practising together cannot sign deeds or contracts passed before them in the name of their firm, although they may sign in that name their advertisements, notices and documents, other than notarial deeds (R.S.Q. 1909, art. 4621), and so a client is likely to come into contact with only one of the members of a firm. Upon cross-examination the following information was elicited from Mrs. Rafferty referring to time subsequent to the death of Mr. Cox:

Q. The late Mr. Rafferty was subsequently a client of Mr. McKenna's?

A. He was a client of the firm; he was not personally acquainted with Mr. McKenna.

Q. He did not know him?

A. No, not any more than the other members of the firm, but the firm was a good firm, and he dealt with them.

The appellant, if not an actual partner, was such according to all appearances. He had caused his name to be published as that of a member of the firm. It appeared upon the door plate and upon the letter heads and bill heads of the concern, and it may be assumed that it would have been inconsistent with the arrangements existing between Mr. McKenna and the appellant, and with their purposes, that information should have been handed out to clients disclosing the fact, if it were a fact, that there was in reality no partnership, or to rebut the inferences which would naturally and legitimately be drawn by clients from the representations appearing by the advertisements of the firm; there is moreover nothing suggested in the proof on either side of the case to give rise even to a conjecture that either Mr. Rafferty or his wife had at any time, previous to the discovery of the misappropriation of the money, any knowledge or reason to suspect that the relations between Mr. McKenna and Mr. Pérodeau were otherwise than as so represented. It is reasonable therefore to conclude that Mr. Rafferty, in going to the office and transacting his business there, in the course of his transactions, had acquired and accepted as matter of belief those particulars with reference to the constitution of the partnership which it was an object of the associates to make known in the

manner described. At the time when Mr. McKenna received the money and instructions for its payment to the Montreal Realty Company, Mrs. Rafferty held her husband's power of attorney, and the cheque for $6,069 which she was asked to sign by Mr. McKenna, and did sign at his request, was by his hand made payable to Stuart, Cox McKenna & Pérodeau, and thus there was a direct request and representation by one of the nominal partners to the client that she should entrust her money, or her husband's money, to the firm in the name of which Mr. McKenna was practising, and which was described by the latter in a manner to indicate no difference in quality or status as between Mr. McKenna and the appellant, except that the name of the latter followed that of the former. Belief or intention or state of mind is proverbially difficult of proof but inferences may be drawn from the facts and circumstances of the case. Lord Blackburn said in the well known case of *Smith* v. *Chadwick* (1):

> I think that if it is proved that the defendants with a view to induce the plaintiff to enter into a contract made a statement to the plaintiff of such a nature as would be likely to induce a person to enter into a contract, and it is proved that the plaintiff did enter into the contract, it is a fair inference of fact that he was induced to do so by the statement.

The parties here were engaged in a serious transaction of some magnitude, a sum of upwards of $6,000 was being entrusted to a notary to apply for Mr. Rafferty's benefit, and it is, I should think, extremely unlikely that in these circumstances Mrs. Rafferty would be apt to reject, or to accept with any degree of credence less than belief, a statement made to her by the notary, as in effect it was made, that he had a partner in the execution of the business, Mr. Pérodeau, who assumed with him the responsibilities which the law imposed upon partners in the like circumstances; and of course it was entirely within the scope and intent of the nominal partnership that the one partner should bind the other in such a transaction by the representations which they had publicly announced and were holding out. I think that the belief of Mr. Rafferty and his wife in the existence of a real partnership is involved in the findings; and, for the reasons which I have stated, I do not think that the findings should be disturbed.

(1) [1884] 9 App. Cas. 187 at p. 196.

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I come now to the question as to whether the liability of Mr. McKenna and the appellant was a joint liability, imposing upon the latter only an obligation to contribute one-half of the loss, or a joint and several liability, involving an obligation for the whole. The answer depends upon the interpretation of several articles of the Civil Code. It is provided by art. 1857 that partnerships are either civil or commercial, and, by art. 1863, as follows:

1863. Commercial partnerships are those which are contracted for carrying on any trade, manufacture or other business of a commercial nature, whether general or limited to a special branch or adventure. All other partnerships are civil partnerships.

Partnership between notaries for the practice of their profession is not of the character here described as commercial, and is therefore a civil partnership. The general subject of partnership is regulated by the 11th title of Book III of the C.C. "Of Partnership," and, in the 3rd chapter of this title, there are two articles, 1854 and 1856, to be considered, which read as follows:

1854. Partners are not jointly and severally liable for the debts of the partnership. They are liable to the creditor in equal shares, although their shares in the partnership may be unequal.

This article does not apply in commercial partnerships.

1856. The liabilities of partners for acts of each other are subject to the rules contained in the title of mandate, when not regulated by any article of this title.

Now referring to the title of Mandate, which is the 8th title of Book III of the Civil Code, it is provided by the 2nd chapter, which regulates the obligations of the mandatary, article 1712, that:

1712. When several mandataries are appointed together for the same business, they are jointly and severally liable for each other's acts of administration, unless it is otherwise stipulated.

And, moreover, it is provided in the 4th chapter, "Of advocates, notaries and attorneys," article 1732, that

advocates, attorneys and notaries are subject to the general rules contained in this title, in so far as they can be made to apply.

This article is relevant only as showing that notaries may be subject to the general rules of mandate, but it throws no light upon the question as to how far these general rules can be made to apply. One other article was referred to at the argument; it is art. 1128 of the 3rd title of Book III, "Of obligations," and it is as follows:

1128. The obligation to pay damages resulting from the non-performance of an indivisible obligation is divisible.

But if the non-performance have been caused by the fault of one of the co-debtors, or of one of the co-heirs or legal representatives, the whole amount of damages may be demanded of such co-debtor, heir or legal representative.

This article might be of some importance in ascertaining the amount of the liability of Mr. McKenna's estate, but it does not assist in the case of the appellant. The obligation is, for present purposes, divisible or not, depending upon the application of the other articles to which I have referred.

Assuming that Art. 1869 may be applied to determine the liability, and it was upon that assumption that the case was argued, there seems to be no occasion for invoking the provision of art. 1856. By arts. 1850 and 1851, which belong to the second chapter of the title of partnership, bearing the description "Of the obligations and rights of partners among themselves," it is provided that when several of the partners are charged with the management of the business of the partnership generally, and without a provision that one of them shall not act without the others, each of them may act separately; that partners are presumed to have mutually given to each other a mandate for the management, and that whatever is done by one of them binds the others. The relation of agency or mandate in which the persons carrying on a joint business stand to each other is a material subject of inquiry upon the question of partnership; and so, for the regulation of the liabilities of partners for the acts of each other, resort must be had to the rules of mandate, and these are conveniently and naturally introduced into the partnership articles of the code by reference to the rules contained in the title of mandate. But in this case the appellant's liability is not for the act of his partner or nominal partner; it arises by reason of the fact that the partnership has failed to account for, or to apply to the purpose directed, the money which was received by the partnership for that purpose. The money was paid to Mr. McKenna who had authority to receive it and did receive it on behalf of the firm to be applied in accordance with the instructions which were communicated to him, and there can be no doubt that in this he was acting within the scope of his authority. Hence arose at least a debt of the partnership to repay the money, if the mandate were not executed, and for this art. 1854 declares that

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the partners are liable to the creditor not jointly and severally, but in equal shares; this article regulates the measure of the appellant's liability, because it is a partnership liability, and because, with respect to partnership liabilities, the article is not controlled or qualified by the provisions respecting mandate. Moreover, upon the only assumption upon which art. 1856 can be considered to apply, namely, if the liability be that of a partner for the act of his co-partner, it will be perceived that such liabilities, in so far as they comprehend debts of the partnership, are regulated by art. 1854, and therefore expressly within the exception to art. 1856. It seems consequently to be clear, subject to what I am about to say, that, upon the true interpretation of the relevant articles of the Civil Code, the appellant is liable, not, as found by the learned trial judge and the court of King's Bench, for the entire debt, but only for one-half.

There are some other considerations however which should not be overlooked and which were suggested, although they were not discussed, at the hearing. It is declared by art. 1854 that this article does not apply in commercial partnerships. The partnership between these two notaries was admittedly not a commercial partnership; it was a civil partnership. Commercial partnerships are divided into four classes, the first of which is called general, and in the fascicle of articles descriptive of general partnerships is placed art. 1869, which provides for the liability of nominal partners; unless therefore it is to be supposed that this article has been misplaced, and reason for that supposition may be found in the aptitude of the provision as affecting every partnership, it would be necessary to confine the article to partnerships of the general commercial variety. It will be realized however that, if it be assumed that the apparent partnership between Mr. McKenna and the appellant was no more than a nominal partnership, there was as between Mr. McKenna and the appellant in fact no mandate, although they had concurred in representing in the manner which has already been explained that each was the mandatary of the other; such a condition of fact would admit of the application of art. 1730 of the Civil Code, which is to be found under the title of mandate in section II, "Of the obligations of the

mandator towards third persons"; the article provides that:

> 1730. The mandator is liable to third parties who in good faith contract with a person not his mandatary, under the belief that he is so, when the mandator has given reasonable cause for such belief.

And, by the application of this article to the present case, the appellant, as the mandator, became liable to the third party, Mr. Rafferty, because the latter in good faith contracted with Mr. McKenna, a person who, upon the hypothesis, was not the appellant's mandatory, under the belief that he was so, the appellant having given reasonable cause for such belief. If therefore the appellant can escape liability under art. 1869 upon the pretension that that article does not apply to civil partnerships, he is nevertheless held to liability upon the same state of facts under the provisions of art. 1730; but, even so, the measure of his ability would be regulated by art. 1854, because his liability would be shown by proof of his holding himself out as a partner; and, if he is bound by his representation of partnership, it would be strange indeed if, by reason of so representing himself, he would incur a responsibility greater than that to which he would have been subjected as a true partner. Therefore under art. 1869, if it apply, or under art. 1730, if the former article do not apply, the result is the same, and the extent of the appellant's liability is in either case measured by the same rule.

It was said that however the case might stand as to the first payment of $6,069, there could be no liability for the second payment of $900, because that payment was made by a cheque signed by Mrs. Rafferty in which the firm of Stuart, Cox & McKenna is named as the payee, and moreover that the fact that the name of Pérodeau did not appear among those nominated by the drawer as payees of the latter cheque was strong evidence to show that Mrs. Rafferty was not engaging the credit of the appellant in the transaction. I am not disposed however to permit this circumstance to effect the case in the one way or the other. There can be no doubt that the second cheque was supplementary to the first, nor that it was intended to pass through the same channel and to be applied for the same purpose, and therefore the appellant became responsible in like degree for the application of both cheques. It is

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found that the firm name was used by McKenna and the appellant in order to obtain credit, and the fact that Mrs. Rafferty's daughter happened to omit the name of Pérodeau in describing the firm in the cheque for $900, which she drew at her mother's request, might reasonably have been explained, if it required explanation, in a manner which would exclude any thought of ignoring the appellant's responsibility. The explanation may be imagined; it is not stated; but the objection now comes with little propriety from the appellant, seeing that it was through the interposition of his counsel that the testimony which Mrs. Rafferty would have given upon the subject was rejected.

According to the views expressed by the French commentators, members of a civil partnership are not severally liable. See Bugnet's 3rd ed. of Pothier, vol. 4, *Traité du Contrat de Société,* par. 96; Baudry-Lacantinerie, *Traité de Droit Civil,* 3rd ed. par. 349; Laurent, vol. 26, pars. 348 and 349. The decisions in the province of Quebec are not uniform. The Court of King's Bench has followed a decision pronounced by that court in 1878 in the case of *Ouimet* v. *Bergevin* (1), in which Chief Justice Sir A. A. Dorion, pronounced the judgment, and it is very briefly stated as follows:

> This is an appeal from a judgment rendered by the Superior Court (Mackay J.) at Montreal, on the 12th of February, 1877, condemning the appellant, as having been a member of the professional firm of attorneys, Messrs. Bélanger, Desnoyers & Ouimet, to pay to the respondent certain moneys collected by said firm and claimed by respondent to be payable to her. The only question raised under this appeal is, whether practising attorneys who carry on business as such under a firm name, are jointly and severally liable to their clients for moneys collected by the firm. We are all of opinion that they are liable just as solicitors in England are. (Troplong, *Société,* No. 373; *Plumer* v. *Gregory* (2). The judge below so found and we therefore confirm his judgment.

There is no further explanation of the facts; they are not stated. The passage in Troplong to which the learned Chief Justice referred has to do with the practice of holding out, and *Plumer* v. *Gregory* (2) is an English decision by Malins V.C. which is not an authority for the province of Quebec. It would not be inconsistent with the statement of the case that the attorneys although practising under a firm name were not partners, and that they were

(1) [1878] 22 L.C.J. 265 (2) [1874] L.R. 18 Eq. 621.

acting under a joint mandate unaffected by any question of partnership, actual or represented. When a question of partnership liability came before the Superior Court in 1881, in *Loranger* v. *Dupuy* (1), Johnson J. who pronounced the judgment said:

> Art. 1854 only creates a joint liability between partners and not a several one, except in commercial partnerships; but the Court of Appeals held in *Ouimet & Bergevin* (2), that there was solidarity between the members of a firm of attorneys.

But he found that the partnership which he was considering was commercial, and it was for that reason that he held the partners jointly and severally liable. In *Julien* v. *Prévost*, decided by the Circuit Court (3), where the defendants were practising the profession of advocate in partnership, Loranger J., pronouncing the judgment, said:

> Il est admis que les associés sont responsables solidairement pour l'argent reçu par la société. La question a été le sujet d'une longue controverse, mais la Cour d'Appel l'a décidée dans la cause de *Bergevin* v. *Ouimet* (2), et cette décision est devenue la jurisprudence. On a prétendu que cette cause ne s'appliquait pas. J'ai lu les factums, et je trouve que le principe décidé dans la cause de Bergevin s'applique à la présente cause. Le vice-chancelier Wood, dans la cause de *Plumer* v. *Gregory* (4) dit clairement: "Each partner is the agent of the other and bound by his acts and representations." L'article 1712 du Code Civil dit: "Lorqu'il y a plusieurs mandataires établis ensemble pour la même affaire, ils sont responsables solidairement des actes d'administration les uns des autres, à moins d'une stipulation contraire.

And he accordingly found joint and several liability. It would appear however from the judgment of the Court of Review in *Baron* v. *Archambault* (5) that, although the question was as to the nature of the liability of notaries who carried on their notarial business in partnership, it was nevertheless because their partnership business also embraced real estate and insurance agency, and because the transaction involved in the case was of a commercial character, that the partners were held to be jointly and severally liable. In *Drouin* v. *Gauthier* (6), the Chief Justice, Sir A. Lacoste, who gave the judgment of the King's Bench, held that a firm of advocates who, as a civil partnership, had made a promissory note in their firm name should be held not severally liable but in equal shares under art. 1854. No reference is made in this case to the deci-

(1) [1881] 5 L.N. 179.
(2) 22 L.C.J. 265.
(3) [1884] 8 L.N. 143.
(4) L.R. 18 Eq. 621.
(5) [1900] Q.R. 19 S.C. 1, at p. 22.
(6) [1903] 5 Q.P.R. 211; 9 Rev. de Jur. 176.

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sion in *Ouimet* v. *Bergevin* (1) or in *Julien* v. *Prévost* (2), but it appears to be the latest deliverance of the Court of King's Bench upon the subject preceding the judgment in the present case, and, curiously enough, it escaped reference upon this occasion.

In this state of the decisions one is forced to conclude that the jurisprudence cannot be regarded as established by the *Bergevin Case* (1); and, seeing that the liability of civil partners is regulated explicitly by Art. 1854 of the Civil Code, a legislative enactment which is not of doubtful meaning; that the partnership or nominal partnership existing between the notaries in this case is within the application of the article, and that it is the office of the judges to declare the expressed intention of the legislature, the liability must, in accordance with the legislative rule, be adjudged in equal shares.

For these reasons the judgment below should be varied by reducing the amount by one-half.

IDINGTON J.—I concur in the result.

Appeal allowed in part.

Solicitors for the appellant: *Greenshields, Greenshields & Languedoc.*

Solicitors for the respondents: *St. Germain, Guérin & Raymond.*