Judgment of the Lords of the Judicial Committee of the Privy Council on the three Consolidated Appeals of Eddy v. *Eddy* et vir, *from the Court of Queen's Bench for Lower Canada, Province of Quebec; delivered 24th March* 1900.

Present at the Hearing:

LORD HOBHOUSE.
LORD MORRIS.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The Appellant in this case is a gentleman residing at Hull in the Province of Quebec. The Respondent who resides in the same place is his only child. She is married to a Mr. Bessey who is a formal party to the litigation, but the spouses are separate as regards property, and she is substantially the sole Respondent. This Appeal is the outcome of a group of lawsuits, the first of which was commenced by the Appellant against the Respondent in December 1894. That led to a cross-action or incidental demand by the Respondent. Afterwards the Respondent instituted two suits against the Appellant one accompanied by an incidental or supplemental demand. All were united for the purpose of trial, and were the subject of three simultaneous decrees in the Superior Court. The same course was followed in the Court of Queen's Bench upon Appeal.

The original domicile of the Appellant and of his late wife Mrs. Eddy was in the State of Vermont, where they married in the year 1846,

and where their daughter the Respondent was born in the year 1851. In the year 1854 they removed to Hull which became their permanent place of residence and their domicile. They seem to have had very little property at the time of their immigration, and with the exception of some small inheritance which came to the wife from her parents, they were dependent upon their own exertions for their livihood. They were very successful in a lumbering trade and a match trade. Both of them were very industrious and energetic and there is evidence to show that the wife took an important part in the joint concerns.

On the 17th August 1868 Doctor and Mrs. Graham conveyed to Mrs. Eddy the Appellant's wife a plot of land in Hull for the sum of 11,000 dollars, which Mrs. Eddy bound herself to pay by instalments. The Appellant was party to the conveyance and formally authorised his wife to effect it (*Rec. p.* 35). In the year 1881 a formal acknowledgment was made by Doctor and Mrs. Graham of the payment by Mrs. Eddy of all the instalments (*Rec. p.* 754). This property is called the Homestead. The Eddy family resided upon it, and considerable sums of money were spent in buildings and improvements.

In the year 1873 the Appellant became embarrassed for money, and with a trifling exception he made a conveyance of all his property for the benefit of his creditors (*Rec. p.* 761). In 1876 he became bankrupt and was discharged on compromising with his creditors for 20 cents in the dollar. After that his concerns became prosperous again. A company was founded on his business in which he holds the greater number of shares, yielding a large income.

On the 7th September 1880 a conveyance was effected of another piece of land called

Mackay Wright Farm to the Respondent for the sum of 17,000 dollars. The Appellant was not a formal party to the transaction, but it is agreed that the purchase money was paid by him.

In the year 1883 further purchases of land were made by Mrs. Eddy for sums amounting to about 10,000 dollars. The forms of the transactions were similar to those by which the Homestead was purchased, except that in some of the instruments Mrs. Eddy was described as being separated from her husband in property according to the laws of Vermont where their marriage took place (*Rec. pp.* 46–56). The land was used for farming purposes. Mrs. Eddy remained the ostensible owner of it during her life. It is called the Conroy Farm.

On the 10th September 1893 Mrs. Eddy died. By her will made seven years earlier she gave all her property to the Respondent, and appointed her to be executrix. The will was proved by the Appellant. Accounts of the estate were duly filed, and the Respondent formally accepted the succession by authorisation of her husband on the 21st February 1894. In June 1894 the Appellant contracted a second marriage, after which dissensions broke out in the family, and the Appellant made the claims which are now under consideration.

The Appellant does not claim ownership in any of the purchased properties. He presents himself as a simple creditor of his daughter and of his wife's estate. His case is that he advanced money to his wife and daughter for the purchase of their respective properties, and for improvements and other expenses in respect of them; and that nothing having been repaid to him he is now entitled to enforce the debts. He claims against his daughter 45,000 dollars and upwards for the Mackay Wright Farm; and against his wife's estate upwards of 122,000 dollars for the Homestead, and of 21,000 for the Conroy

Farm. His total demand is upwards of 187,000 dollars.

As regards the direct claim against her on account of the Mackay Wright Farm the case made by the Respondent is that the purchase was made entirely on the initiative of the Appellant who was then engaged in large commercial concerns, and that it was made by way of advancement to her, who had then no property of her own, but was living with her parents and was supported by them. She showed further that the Appellant managed the property and received its produce from the time of the purchase onwards, and that on the 17th July 1890 the Appellant took from her a general power of management over all her property and in special over the Mackay Wright Farm. This power was made irrevocable for a term of five years, and it is the basis of one of the actions instituted by the Respondent.

As regards Mrs. Eddy's estate there are numerous defences. The pleadings are very voluminous, and owing to the multiplication of claims cross-claims incidental demands and defences not always easy to follow. But the following passages taken from the plea and the incidental demand of the Respondent disclose the matters which have after full argument appeared to their Lordships the most important for the decision of this case.

"That at the time of the marriage of the said Plaintiff and "the said Zaida Diana Arnold he, Plaintiff, was poor and "without means and his said wife had considerable means of "her own, which he received from her, and also other monies "during their marriage, and by the joint industry of the said "consorts during over twenty years, they had amassed a con-"siderable fortune. That the said Dame Zaida Diana Arnold "had always worked and assisted her husband and contributed "equally with him to their earnings. That afterwards the "said Plaintiff having gone into business, and engaged in "commercial ventures, and incurred risks and liabilities of "large amounts, such an application of the monies of the said "Dame Zaida Diana Arnold, to wit, in the purchase of said "properties and the building of said house and other improve-"ments on the properties in the City of Hull, was made, by "the consent of both consorts, in order to secure to the said

"Dame Arnold the share to which she was justly entitled in "their joint property."

The next paragraph applies only to the Homestead.

"That shortly after the said block in the City of Hull was "purchased and the said house was built, the Plaintiff became "insolvent; but that he always treated the said house and "property as belonging purely and simply to his wife, denying "that he had any claim whatever against her in connection "therewith, and acknowledging that she had still large claims "against him."

Then speaking of the Conroy Farm, the Respondent says that it was, "acquired by the "said Dame Zaida Diana Arnold with her own "monies, derived from her own earnings and pro-"perty, and bequests made to her, and from the "revenues of her estate, without any idea of "returning the said properties or their equiva-"lent: and any sums paid by the said Plaintiff "for the purchase of said property, or for taxes, "or interest, or for improvements for or in "connexion therewith, were so paid by him as "being monies of the said Dame Zaida Diana "Arnold, and in liquidation of liabilities con-"tracted by him to her, and as and for a partial "division of assets between them."

During the pendency of the case the Respondent put in an amended plea in which she suggested that by the law of Vermont there may be a partial division of assets between husband and wife, and that a husband may also confer benefits on his wife by gifts which the law of Quebec forbids.

On the 12th January 1897 Mr. Justice Gill who tried the case passed his decrees. He held it to be proved that the Appellant had paid for the various lands and improvements by way of irrevocable gift to his wife and daughter. He accordingly dismissed the Appellant's original action and gave relief to the Respondent on her incidental demand by declaring her to be proprietor and entitled to possession. In the Respondent's suit for re-vendication of movables

he gave her a decree for a number of articles described in a schedule; the total value being 5,702 dollars. In the Respondent's suit for account under the power of attorney granted by her to the Appellant he ordered the Appellant to account or in default to pay 5,000 dollars.

It would seem that the case must have been argued at the trial on the footing that the Respondent alleged that the Appellant's payments were by way of gift, not only as regards herself and the Mackay Wright Farm but as regards her mother and the other properties. That opened a question of great difficulty in point of law; viz. the question whether such a gift could legally take effect between the Appellant and his wife. By the law of Quebec it could not. By the law of Vermont as found by the learned Judge it could. The learned Judge then, addressing himself to the question which law is to prevail, decides that it must be the law of Vermont.

On Appeal the Court of Queen's Bench upheld the decisions of the Superior Court in the two suits commenced by the Respondent. In the Appellant's suit it affirmed the decision of the Court below so far as it dismissed the suit; but on that part of the decree which granted the Respondent's incidental demand the Court of Queen's Bench made a variation which is the subject of a still pending Appeal by the Respondent to the Supreme Court of Canada. The effect of the decree as it stands on this part of the case is to declare the title of the Respondent to the three properties in question, and to cancel an entry which the Appellant had caused to be made in the public register of his claim as a charge against the properties. But the decree does not give possession to the Respondent.

The view which the Queen's Bench take of the law applicable to the case is materially

different from that of Mr. Justice Gill. They decline to decide whether the rights of husband and wife are governed by the law of Quebec or by that of Vermont. That still leaves them free to sustain the Superior Court's decree in the Respondent's suit for movables because the law most favourable to the Appellant, viz. the law of Quebec, does not forbid *dons modiques*, which they consider the articles in question to be.

The Court's decision to dismiss the suit is arrived at by an entirely different road. Substantially their position is as follows:— The Appellant claims that his expenditure in respect of the properties in question was made by him as the mandatary of his wife and daughter, and it is common ground that he has received income from the property. He contends that a gift to his wife is illegal but he cannot have given more than the excess of his expenditure over his receipts. Whether that amounts to much, or to little such as the law would allow, or to anything at all, cannot be told until he has rendered an account. If there has been no gift, or a permissible one, what need to examine the difficult question of international law? It seemed to the learned Judges that this obstacle lay upon the threshold of the Appellant's suit. The Court could not, they said, do its duty unless he supplied the means of overcoming this preliminary obstacle; and they applied the maxim that a mandatary must render an account before bringing an action for reimbursement. That they say is the sole ground upon which the Court dismisses the action. On the same ground, that the Appellant is a mandatary, and that under Article 1713 of the Civil Code a mandatary is entitled to retain the thing committed to him until his charges are paid, the Court refuses to affirm the Respondent's right to immediate possession of the property.

The Appellant has appealed against the decrees as a whole, and the case lodged by him challenges the whole judgment of the Court below. At the Bar however it has been admitted that he cannot maintain his direct claim against the Respondent in connection with the Mackay Wright purchase. Nor has any substantial reason been assigned for impeaching the decree in the Respondent's second suit under the power of attorney. The question as to the Respondent's right to recover jewels and like personal matters is reduced to a very narrow compass. Both Courts have held that they were given to Mrs. Eddy. Both have held that Mrs. Eddy was not legally incapacitated from receiving them. The Superior Court held so because it applied the law of Vermont. The Court of Queen's Bench held so because, applying the law of Quebec, the gifts are modest ones such as that law does not interfere with, when it is considered that they are referable to a married life of more than 40 years' duration, and attended for a large portion of the time by great prosperity. Their Lordships have heard no reason why they should dissent from this view of the Court of Queen's Bench; and the subject is one on which they would require strong and clear reasons for dissenting from those who dwell in the society which the law affects.

There remain the questions raised in the Appellant's original suit. The greater part of the argument addressed to their Lordships on the part of the Appellant consisted of very vigorous attacks on the position of the Court of Queen's Bench that the Appellant's suit must fail because he had not previously rendered an account, and on the position of the Superior Court that the legality of a gift from the Appellant to his wife is to be tested by the law of Vermont.

As regards the necessity for a preliminary account their Lordships have found much difficulty in deducing from the authorities cited by the Respondent's Counsel any such stringent and peremptory rule as they contend for ; but in the view that they have ultimately taken of the case they do not find it necessary to decide this question.

As regards the question which of the two national laws is applicable to the case it is necessary to distinguish between different parts of the case and to see precisely what is meant by saying that it is, or is not, governed by the law of Vermont. There is no dispute that when the Eddys married the ordinary rules relating to husband and wife in Vermont attached to them, whereby they were separate in property. Nor is it contended that when they acquired a domicile in Quebec that incident of their marriage contract was altered. The Appellant's suit is not founded on the principle that there was community of goods between himself and his wife. That indeed would be fatal to his case, which rests throughout on the view that he and his wife were separate, and that she borrowed money of him in order to purchase property for herself. So far it is clear that the law of Vermont applies. The question is whether it applies to gifts between husband and wife domiciled in Quebec. The Quebec law interposes no difficulty as regards separation or community of goods. On these points it leaves parties contemplating marriage free to make what contracts they think fit, and as they may make contracts in Quebec they may equally bring into Quebec ready made contracts and leave them untouched. As regards gifts between husband and wife the parties are not left to freedom of contract. They are positively prohibited from making such gifts. And considering the nature of the prohibition and the very stringent

terms of Section 6 of the Civil Code the view of the Superior Court presents grave difficulties.

But before discussing the validity of a gift there must be a gift to raise the question. On this point after the greater part of the legal argument had been presented in the opening, questions were asked which disclosed that except with respect to the Mackay Wright purchase no gift was alleged upon the pleadings. Neither the Appellant nor the Respondent states a gift from the husband to the wife nor is such a thing referred to till a late period in the pleadings when an allegation of the legality of such a gift in Vermont was introduced. But for that, there would have been no question of international law at all.

The real question is whether taking the Appellant's case as he has presented it there is any sufficient evidence to support it. He has to account for the fact that according to the documents lands were purchased and paid for by his wife and daughter, that on the death of his wife his daughter succeeded to the purchases by the wife, and that, having regard to the circumstances of the family, the enjoyment of the properties has been consistent with the ownership of the ostensible purchasers. What he shows is that in point of fact all payments for these properties were made by means of his cheques given either as an individual or described as manager of the business which he and his wife created. That circumstance however does not prove that he was the sole owner of the money so spent. It is consistent with his being the owner, but it is also consistent with the Respondent's suggestions that he had in his hands money belonging to his wife, or that the money was being earned by the two, and that the payments made by the husband for the property conveyed to the wife were a mode of securing to

her a share in the joint earnings. Their businesses, or branches of business, were jointly worked. The Appellant was the head and manager of all, and so, on whatever footing payments were made, they would equally come through his hands. There are no accounts or memoranda to show on what footing the payments were made. He suggests that his accounts were burnt in an accidental fire, but there is no evidence to show that any existed to support his present case.

The Appellant made no claim as creditor of wife or daughter until after the death of his wife. She must have been the only person except himself who knew the precise truth of the matter; for it is clear that the daughter took no part in the transactions. It was open to him to select the character in which he would make his claim, and he selected that of creditor. He asserts that his wife, having no property of her own or very little, conceived the idea of purchasing land by means of loans from him to be repaid with interest, and of erecting buildings on the land by the same means; and that through a series of years he made advances for this purpose, though never taking any receipt or making any entry or memorandum in his books to show the nature of his expenditure. He tells the same story with respect to his daughter. It is obvious that the character of donor would not suit his case as regards the daughter's purchase, for a gift to her was not only a very natural and probable course for a father to take towards his only child, but was also without legal objection, so that if that property was given he could not recover it. Anyhow he tells the same story with regard to all three purchases. There is no documentary evidence of it except the payments made by the Appellant's hand, and inasmuch as those are consistent with

other explanations, there is no unambiguous evidence on the point unless we are to take the statements of the Appellant in his pleadings as evidence. In these circumstances it becomes very important to see how the Appellant has treated these properties before the present quarrel sprang up.

In July 1873 he conveyed for the benefit of his creditors all his estate movable and immovable which is particularly mentioned in the schedules annexed to the deed of conveyance. Those schedules contain no mention of the Homestead which had then been purchased and was the family residence (*Rec. p.* 76).

Afterwards in December 1876 the Appellant having become insolvent put in upon oath a statement of his liabilities and assets (*Rec. p.* 103). In a previous statement made by him for his creditors in June 1873 he had entered his wife as a creditor for 1,504 dollars (*Rec. p.* 271). In the statement of 1876 he enters his wife as a creditor for 1,003 dollars (*Rec. p.* 105) and he does not enter among his assets any of that money which he now alleges was due from her. These entries of debt to the wife and the omission to enter the debt due from her are not explained by the Appellant, inconsistent as they are with his present claim. They are consistent with the supposition that he had made his payments for the Homestead out of money in his hands belonging to his wife, or out of money agreed to be due to her for her earnings in the joint business; or with the supposition that he had still money in his hands which was hers by right. But if his present claim be a true one he must have been deceiving his creditors at that time.

After the death of Mrs. Eddy a statement of her succession was made for the Collector of Revenue (*Rec. p.* 73). This statement though

made in form by the Respondent was in effect made under the instructions of the Appellant and of Mr. Gormully his Counsel. It shows that the Homestead and the Conroy Farm were property devised by Mrs. Eddy. It shows also that there were debts due from Mrs. Eddy amounting to 800 dollars, but it does not mention any debt due from her to her husband. This statement is dated 20th November 1893. It is clear that up to that date the Appellant took the same view of his legal rights against his wife as he did when the negotiations with his creditors and the accounts of his bankruptcy were pending.

In December 1894 he filed his declaration in this action which gives a new version of the story wholly irreconcilable with anything that had gone before. In effect he contradicts all the formal documents and all his previous statements. To maintain such a case would require very cogent evidence, and there is no evidence except the Appellant's own statements in his pleadings.

It is true that in the Superior Court the issue became shifted or confused in some way, and the defence applicable to the Mackay Wright farm was treated as if it applied to the two other properties. The Appellant has willingly enough accepted that change of issue, even though it involved the abandonment of his case so far as concerns the Mackay Wright Farm, because it gives him some firmer ground to stand upon for claiming the other two properties. But the Respondent has never accepted the change, except to the extent of arguing provisionally that if there was a gift it was valid. She has throughout insisted on the grounds taken in her plea, as is shown by her factum lodged in the Appeal to the Queen's Bench and by her response to the present Appeal. She is not bound to show

what is the true explanation of this long family history from 1868 to 1894. It is sufficient for her to say that the Appellant's explanation cannot be the true one. Their Lordships hold not only that it is devoid of proof, but that of the various explanations which may be suggested it is the least probable in itself and the most opposed to such evidence as is attainable.

The result is that this Appeal fails at all points. Their Lordships will humbly advise Her Majesty to dismiss it, and they direct that the Appellant shall pay the costs. In the month of June last the Appellant moved to expedite the hearing of the Appeal, and in July the Respondent made a like motion. The available time was filled with other appeals, and no order was made on either motion. Their Lordships do not think fit now to make any order as to the costs of either.