1st May, 1897.

Quebec]

DUROCHER v. DUROCHER.

Evidence—Judicial admissions—Nullified instruments—Cadastre—Plans and official books of reference—Compromise—"Transaction"—Estoppel—C. C. arts. 311 *and* 1243–1245—*C. C. P. Arts.* 221-225.

A will, in favour of the husband of the testatrix, was set aside in an action by the heir at law and declared by the judgment to be *un acte faux*, and therefore to be null and of no effect. In a subsequent petitory action between the same parties,

Held, Girouard, J., dissenting, that the judgment declaring the will *faux* was not evidence of admission of the title of the heir at law, by reason of anything the devisee had done in respect of the will, first, because, the will having been annulled was for all purposes unavailable, and, secondly, because the declaration of *faux*, contained in the judgment, did not show any such admission.

The constructive admission of a fact resulting from a default to answer interrogatories upon articulated facts recorded under C.C.P. Art. 225, cannot be invoked as a judicial admission, in a subsequent action of a different nature between the same parties. Statements entered upon cadastral plans and official books of reference made by public officials and filed in the lands registration offices, in virtue of the provisions of the Civil Code of Lower Canada, do not in any way bind persons who were not cognisant thereof at the time the entries were made.

A deed was entered into by the parties to a suit in order to effect a compromise of family disputes and prevent litigation, but failed to attain its end, and was annulled and set aside by order of the Court as being in contravention of Article 311 of the Civil Code of Lower Canada.

Held, Girouard, J., dissenting, that upon the nullification of the deed no allegation contained in it could subsist even as an admission.

The doctrine of estoppel by deed prevailing under the law of England does not exist under the French law in force in the Province of Quebec or by virtue of the Criminal Code. (See Q.R., 5 Q.B. 458).