credit balance of $17,185; and Smith a credit balance of $27,379.

MacLean made an arrangement for purchasing the assets for a sum which would be sufficient for payment of the privileged debts and expenses in insolvency in full and of 50c in the dollar to the other creditors. The creditors agreed to accept this composition in satisfaction of their claims and to discharge all the partners, and the proposal was approved by the proper authorities. Accordingly, by a deed of November 6, 1891, the curator, in consideration of the agreed payments by MacLean, transferred to him all the assets and estate of the late firm as it existed at the time the curator was appointed.

There was no mention made throughout the proceedings of any separate estate of the partners or of their separate debts. The right of action by the partners for an account and partition, after payment or satisfaction of all the debts, was not a right of action of the firm and did not pass by the assignment to the respondent.

In April, 1892, this action was commenced by the appellant against the respondent to recover $11,213, being the proportion of respondent's overdraft due to him if the same were brought in and divided between the appellant and Smith in proportion to the sums standing to their credit respectively at the date of the abandonment. Smith was called as *mis-en-cause*, but apparently took no part in the litigation.

The action was heard before Mr. Justice Jetté, who gave judgment for the appellant for $10,261. This sum was arrived at in a somewhat different mode than that suggested in the appellant's declaration. In the Court of Queen's Bench Chief Justice Lacoste pointed out that the action was irregular in form, and that it ought to have been an action for account and partition between all the partners, but considered that justice might be done between the partners in the action as framed. The learned Chief Justice also pointed out what he considered to be the proper form of account and relief to which the appellant was entitled, but, as the result would be a sum in excess of the judgment, the Court dismissed MacLean's appeal.

The judgment of the Queen's Bench was reversed by a majority of the Supreme Court.

Their Lordships have no hesitation in saying that they agree with the judgment of the Court of Queen's Bench and the minority of the Judges in the Supreme Court.