

HELD (*reversing the judgment of the Supreme Court of Canada, 25 Can. S. C. R. 225, and restoring the judgment of the Court of Queen's Bench, Q.R., 3 Q.B. 434, which affirmed the judgment of the Superior Court, Jetté, J., Q.R., 4 S.C. 36*): that the assignment of the estate to the curator and the discharge by the creditors, had not the effect of releasing the partners from their liability to account *inter se*, having regard to the articles of partnership and their respective contributions and drawings.

This was an appeal from a judgment of a majority of the Supreme Court of Canada (Chief Justice Strong and Mr. Justice Taschereau dissenting) of June 26, 1895, which dismissed the action taken by the appellant against the respondent and reversed the judgments of the Court of Queen's Bench for the province of Quebec (Appeal Side) and of Mr. Justice Jetté in the Superior Court.

Mr. Donald Macmaster, Q.C., and Mr. Beaudin, Q.C. (of the Canadian Bar), were counsel for the appellant; the Hon. Edward Blake, Q.C., (of the Canadian Bar) and Mr. Montague Muir Mackenzie for the respondent.

LORD DAVEY now delivered their Lordships' judgment. This appeal, he said, arises out of an action by one of three partners against another partner for recovery of a sum of money under the following circumstances. By articles of partnership, dated December 30, 1886, McLean (the present respondent), Stewart (the present appellant), and Smith (who was called as *mis-en-cause*) entered into a partnership for five years. The three partners agreed to contribute to the capital certain amounts which were ascertained at the following sums:—MacLean, \$4,180; Stewart, \$25,292; Smith, \$30,350. The profits and losses were divisible in the following proportions, viz.:—McLean one-half, and Stewart and Smith each one-quarter.

On the 22nd of July, 1891, the partners made an "abandonment" of all their property to their creditors. Their movable property was described as consisting of their stock-in-trade in store in the city of Montreal, book debts, and bills receivable. The list of creditors did not contain any of the separate creditors of the partners. At the date of the abandonment the capital accounts of the partners were as follows, viz.:—MacLean had a debtor balance against him of \$29,079, or, in other words, had overdrawn to that amount: Stewart had a