the said party of the first part, or any of them, the whole of which is valued at forty thousand dollars, and is contained in an inventory thereof thereunto annexed for reference after having been signed for identification by the said parties and notary, but, whereas the said plant, tools, horses and appliances, steam tugs, scows, quarries and other items had been heretofore sold by the said party of the first part to the firm of Morland & Watson, of the city of Montreal, hardware merchants, to secure them certain claims which they had against said A. P. Macdonald & Co. for money used in the construction of the works referred to, to the extent and sum of twenty-four thousand dollars and interest; and whereas the said James Worthington has paid said amount of twenty-four thousand dollars and redeemed said plant, tools, horses and appliances, and quarries, steam tugs and scows, etc., and now stands proprietor of the same under a deed of conveyance; it is hereby well agreed and understood that the said plant, tools, horses and appliances that are or may be put on the said work shall be and continue to be the entire property of the said James Worthington, until such time as he shall have realized and received out of the business and profits of the present partnership a sum sufficient to re-imburse him of the said sum of $24,000, and interest so advanced by him as aforesaid, as also any other sum or advances and interest which shall or may be paid or advanced to the present firm or partnership, after which time and event the whole of the said stock shall become the property of the said firm of 'James Worthington & Company'; that is to say: the one half shall revert to and belong to the party of the first part, and the other half to the said party of the second part, as the said James Worthington has a full half interest in this contract and all its profits, losses and liabilities, and the said A. P. Macdonald, W. E. Macdonald, and Randolph Macdonald, parties of the second part, jointly and severally, the other half interest in the same."

There was evidence that the plant had cost originally $57,000, and that it was valued in the inventory at $40,000 at the request of the appellant; it was also shown and admitted that the profits of the business were sufficient to reimburse the appellant of the sum of $24,000 and other moneys advanced, and that there was still a large balance to the credit of the partnership.

Held, That the plant, etc., furnished by the respondent having been inventoried and valued in the articles of partnership at $40,000 the respondent had thereby become a creditor of the partnership for the said sum of $40,000, but as it appeared by the said articles of partnership that the said plant was subject at the time to a lien of $24,000, and that said lien had been paid off with the partnership moneys, the respondent was only entitled to be credited, as a creditor of the partnership with the sum of $16,000, being the difference between the sum paid by the partnership to redeem the plant and the value at which it had been estimated by both parties in the articles of partnership. *Estimatio facit venditionem.*

C. Robinson, Q.C., and *Metcalf*, for appellant.

McCarthy, Q.C., and *Cameron*, Q.C., for respondent.

COURT OF APPEAL.

BAILEY V. JELLETT.

Trustee and cestui que trust—Solicitor and client—Deposit of client's money to credit of solicitor—Appropriation of payments.

The plaintiff placed in the hands of one J., a practising solicitor, a mortgage together with a discharge thereof duly executed for the purpose of enabling J. to receive payment of the amount due under the mortgage, which it was arranged, between the plaintiff and J. in the presence of the local manager of a bank of which J. was the solicitor, should be deposited by the solictor in such bank to the credit of the plaintiff, and a deposit receipt obtained therefor, which J. should transmit to the plaintiff. J. did receive the money, amounting with interest, to $6.500, which he deposited in the bank to his private account. About ten days afterwards he drew upon his account for $3,000 which he deposited to the credit of the plaintiff, obtained a deposit receipt therefor in favour of the plaintiff and transmitted the same to the plaintiff on the 26th August, 1881, telling the plaintiff in his letter that "the balance will be sent next