

ent firm, the Merchants Bank of Canada contested the claims on the following grounds, *inter alia*: 1st, that they had been creditors of the firm and continued to advance to the new firm on the faith of the agreement of April, 1886; 2nd, that Mrs. J. S. McL.'s money formed part of J. S. McL.'s capital; and 3rd, that the dissolution was simulated.

Held, reversing the judgment of the Court of Queen's Bench (R. J. Q., 2 B. R. 431), and restoring the judgment of the Superior Court, that the dissolution of the partnership was simulated; and that the moneys which appeared to be owing to Mrs. J. S. McL., after having credited her with her own separate moneys, were in reality moneys deposited by her husband, in order to confer upon her during marriage benefits contrary to law, and that the bank had a sufficient interest to contest these claims, the transaction being in fraud of their rights as creditors. Fournier and King, JJ., dissenting.

Appeal allowed with costs.

Laflamme, Q.C., and *Greenshields, Q.C.*, for appellants.

Hall, Q.C., and *Geoffrion, Q.C.*, for respondents.

Quebec.]

PARÉ V. PARÉ.

Accounts—Action—Promissory note—Acknowledgment and security by notarial deed—Novation—Arts. 1169 and 1171 C. C.—Onus probandi—Art. 1213 C. C.—Prescription—Arts. 2227, 2260 C. C.

In an action of account instituted in 1887, the plaintiff claimed, *inter alia*, the sum of \$2,361.10, being the amount due under a deed of obligation and constitution d'hypothèque, executed in 1866, and which on its face was given as security for an antecedent unpaid promissory note dated in 1862. The deed stipulated that the amount was payable on the terms and conditions and the manner mentioned in the said promissory note. The defendant pleaded that the deed did not effect a novation of the debt, and that the amount due by the promissory note was prescribed by more than five years. The note was not produced at the trial.

Held, reversing the judgment of the Court of Queen's Bench for Lower Canada (Appeal side), R. J. Q., 2 B. R. 489, that the deed