AN IMPORTANT JUDGMENT.

IN the Court of Appeal, in Montreal a fortnight ago, the Chief Justice of Quebec, Sir Alexander Lacoste, delivered a judgment interesting to the dry goods trade all over Canada. It was an appeal by Mr. John McLean, of the wholesale millinery firm of John McLean & Co., from a judgment in the lower court. The facts that led up to the case are as follows: On the 31st December, 1886, Messrs. McLean, Stuart and Smith formed a partnership for five years from the 1st January, 1887. Mr. McLean was to put into the business what was coming to him from the previous firm of John McLean & Co., of which he was a member, and the other two were to put in the amount which they respectively had on deposit in the same firm. The contribution was established: at McLean's $4,480.91, Stuart's $25,292.47 and Smith's $30,350.96, the total being $60,124.34. The firm was dissolved on the 22nd of July, before the expiration of the term agreed upon, by a judicial abandonment made by the partners at the demand of their creditors. Though the statement prepared showed a surplus of $15,000 the firm was agreed to be completely insolvent. McLean offered, with his partners' knowledge, a composition of 50c. in the dollar for chirographery creditors and full payment of all privileged claims, on the condition that the effects should be conveyed to him personally, and that his partners should have a discharge. His offer was accepted and the retrocession was made. The respondent in the case, Mr. Alex. Stewart, took action on the ground that the arrangement effected by Mr. McLean did not cancel the rights and obligations of the partners between themselves, and that Mr. McLean owed him on account of part of his capital contribution, of which the use only was given to the firm. He pleaded that the books of the firm showed $17,185.82 to his credit, $27,379.54 to the credit of Mr. Smith, and, on the other hand, to the debit of Mr. McLean $29,079.31. Mr. Stewart's plea was that the latter had withdrawn this amount from the capital contribution of his partners, and that he should account for it in the proportion of the balance at their credit respectively, which would give him (Mr. Stewart) a sum of $11,213.20, which was the amount of his demand. Mr. McLean, on his part, pleaded "confusion" and "compensation." He offered in compensation of the amount which he might owe, the composition which he paid the creditors and the payment of the privileged debts of the firm. Furthermore, he denied that he was indebted. The deed of partnership authorized him to draw $6,000, and each of his partners $3,000, and he held that he did not draw more than his share. The learned judge of the court below dismissed appellant's pleas, and gave judgment in favor of the respondent for $10,261.08 in reimbursements of part of his capital. The grounds of the judgment were not those of the action. The appellant was not held accountable for the sum of $29,079, but he was condemned to reimburse part of respondent's capital, under the clause of the deed of partnership, which obliged him to discharge half the debts. According to the judgment in the court below, the capital, which was $60,124, having been absorbed by the assignment, became a total loss which must be borne by the partners in the proportion of one-half by the appellant and one-quarter by each of the partners, viz., for McLean $30,062, Stewart $15,031, Smith $15,031. Stewart having furnished $25,292, from which must be deducted his share of the losses, $15,031, there was a balance in his favor of $10,261. Smith having furnished $30,350, from which was to be deducted his share of the losses, $15,031, there was a balance in his favor of $15,319. McLean's share of the debts was $30,062, and his capital $4,481, making a balance against him of $25,581.

After reviewing the different pleas, the Chief Justice spoke as follows on the merits of the case: "Respondent alleges that appellant drew from the firm $29,079 over and above his capital, and he pretends that he owes this amount to his partners to reimburse them pro tanto their capital, deduction being made of the amounts which they had themselves received from the firm, viz., appellant $17,185, Smith $27,379. This demand is irregular. What a partner can exact from his co-partners is an account and partition. In this account and partition each returns to the mass what he received; the debts are deducted, and the balance is divided between the partners in conformity with law and their agreements. If objection had been taken to the form of action, I would have been disposed to dismiss it, but as the object of the action was to obtain a partition of what remains of the partnership, and as by the conclusions respondent offers to tender any account which might be held necessary, an offer which appellant did not think proper to avail himself of, I am disposed, as was the Judge of the court below, to render justice to the parties on the action as brought. The assignment having swallowed up the partnership property there are only the returns of the partners to constitute the mass. But, on the other hand, the partners having been discharged from the debts of the firm, the mass should revert entirely to the partners according to their respective rights. From the mass, therefore, the partners should get back their capital, then divide the balance in the agreed proportion.

"It has been pretended that the partners were not entitled to exact an account of a lost capital. The rules of law seem to be very clear on this point. When a sum of money is put into a partnership capital it becomes the property of the firm which does not owe any account of it. At the dissolution the partner cannot claim it. But the partners may stipulate that they shall get back the amount of their contributions to capital before the division of the assets, and this stipulation may be inferred from their drawing interest on their contributions during the existence of the firm. In my opinion there was an agreement between the parties that the capital should be brought back before the division. But this capital was not, for the purpose of the division, subject to increase or reduction as shown by the books of the firm. This bookkeeping was for the convenience of the partners, but could not change the extent of their rights as determined by the deed of partnership. In one sense the court below was right in saying that the capital being lost, the partners should contribute to the loss of this capital in the proportion agreed. But before applying this rule it should have taken into account the amounts received. Applying the above rules, the mass must be formed by making each partner return what he received from the firm, to pay it pro tanto the capital of each partner, and to divide the loss in the proportion of one-half for McLean and one-quarter for each of the other two partners."

"If it were not so childish and out of date I could take a real good cry," said the woman with the short hair. "What is the matter, dear?" "I wore my husband's vest downtown shopping yesterday by mistake, and there were three big cigars sticking out of the top pocket. I never noticed it till I got home."