

between the new firm of McL. Bros. and the estate of J. S. McL. and Mrs. McL., by which a large balance was admitted to be due by them to the estate of J. S. McL. and to Mrs. J. S. McL. The new firm was declared insolvent in January, 1891. Claims having been filed respectively by Mrs. J. S. McL. and the executors of the estate of J. S. McL. against the insolvent firm, the Merchants Bank of Canada contested the claims on the following grounds, *inter alia*: (1) 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; (2) that Mrs. J. S. McL.'s moneys formed part of J. S. McL.'s capital; and (3) that the dissolution was simulated.

Held, reversing the judgment of the Court of Queen's Bench (Q.R. 2 Q.B. 431) and restoring the judgment of the Superior Court, that the dissolution of the partnership was simulated; 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 the appellants.

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

Quebec.]

CHAMBERLAND v. FORTIER.

Appeal—56 Vict., c. 29, s. 1—*Action négatoire*—*Rights in future*—R.S.C., c. 135, s. 29 (b), amended.

In an action *négatoire*, the plaintiff sought to have a servitude claimed by the defendant declared non-existent, and claimed \$30 damages.

Held, that under 56 Vict., c. 29, s. 1, amending R.S.C., c. 135, s. 29 (b), the case was appealable, the question in controversy relating to matters where the rights in future might be bound.

Vineberg v. Humphson (19 Can. S.C.R. 369) distinguished.

Motion to quash refused.

Langue doc, Q.C., for the motion.

Amyot, Q.C., *contra*.

Quebec.]

PARÉ v. PARÉ.

Accounts—*Action*—*Promissory note*—*Acknowledgment on security by notarial deed*—*Novation*—Arts. 1169 & 1171, C.C.—*Unus prooandi*—Art. 1213, C.C.—*Prescription*—Arts. 2227, 2200, C.C.

In an action of account instituted in 1867, 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