by fire during the continuance of the lease, the amount of the insurance money was received by the appellant.

Subsequently the appellant (alleging that the fire had been caused by the negligence of the respondents) brought an action against them for $9,084, being the amount of the cost of reconstructing and restoring the premises to good order and condition, less the amount received from the insurance. At the trial it was proved that respondents allowed the ashes of hard coal used in the premises to be put into a wooden barrel on one of the flats, but that slushy refuse, tea leaves, etc., were always poured into the barrel. The origin of the fire could not be ascertained.

Held, affirming the judgment of the Court of Queen's Bench for Lower Canada (Appeal side), SIR W. J. RITCHIE, C.J., and TASCHEREAU, JJ., dissenting, that the respondents were not responsible for the loss under Art. 1629, c.c., as the fire in the present case was an accident by fire within the terms of exception contained in the lease.

Appeal dismissed with costs

Macmaster, Q.C., for appellant.

Lacoste, Q.C., for respondents.

SHAW *v.* CADWELL *et al.*

Partnership—Liability—Art. 1867, c.c.

Where one member of a partnership borrows money upon his own credit, by giving his own promissory note for the sum so borrowed, and he afterwards uses the proceeds of the note in the partnership business of his own free will without being under any obligation to, or contract with, the lender so to do, the partnership is not liable for said loan. Art. 1867, c.c. *Maguire* v. *Scott*, 7 L.C. Rep. 451, distinguished.

Appeal dismissed with costs.

Robertson, Q.C., and *Falconer* for appellant.

Geoffrion, Q.C., and *Carter* for respondent.

[April 30.

GREEN *v.* CLARK.

Appropriation of payments—Evidence—Satisfaction of judgment.

G. and the firm of C. & P. were respectively judgment creditors of one J.; and G. accepted in satisfaction of his claim notes of J. indorsed by C. & P. for 60%, and J.'s unindorsed notes for 20% more, and G.'s judgment was assigned to C. & P. as security. C. & P. then undertook to supply J. with goods for which, as they claim, he was to pay cash. After a time C. & P. refused to give J. further goods, and recovered judgment against him on a demand note for a portion of their claim. Other judgment creditors of J. attempted to realize on his stock, and an interpleader order was issued in which C. & P. claimed to rank on the judgment of G. which had been assigned to them. The other creditors claimed that this judgment was satisfied, if not by the settlement with G. for 80%, at all events by J.'s subsequent payments. C. & P., on the other hand, claimed that these payments were all on account of the new supplies of goods for which J. was to pay cash. In his evidence on the trial of the interpleader issue J. swore that the agreement to pay cash was only for one year and after that all payments were to be on the old account. The payments were sufficient, if so applied, to satisfy G.'s judgment.

Held, affirming the judgment of the court below, GWYNNE and PATTERSON, JJ., dissenting, that the evidence was not sufficient to rebut the presumption that the payments were on account of the earlier debt.

Appeal dismissed.

Lash, Q.C., for appellants.

G. Davis and *G. Wills* for respondents.

EXCHEQUER COURT OF CANADA.

THE QUEEN *v.* CHARLAND.

Award of arbitrators increased by the Exchequer Court—Hearing of additional witnesses—Appreciation of the evidence—Appeal to Supreme Court—Weight of evidence.

In a matter of expropriation of land for the Intercolonial Railway, the award of the arbitrators was increased by the judge of the Exchequer Court from $4,155 to $10,842.25, after additional witnesses had been examined by the judge. On an appeal to the Supreme Court it was

Held, affirming the judgment of the Exchequer Court, that as the judgment appealed from was supported by evidence and there was no matter of principle on which such judgment was fairly open to blame, nor any oversight of material consideration, the judgment should be affirmed. GWYNNE, J., dissenting.

Appeal dismissed with costs.

Hogg for appellant.

Belleau for respondent.