In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

ALEXANDER STEWART,

Appellant;

AND

JOHN MacLEAN,

Respondent;

AND

JAMES HARDISTY SMITH,

Mis-en-Cause.

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

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RECORD OF PROCEEDINGS.

TRANSCRIPT of Record and Proceedings in the Supreme Court of Canada, in a cause between

JOHN MACLEAN, (Appellant in the Queen's Bench),

APPELLANT.

and

ALEXANDER STEWART, (Respondent in the Queen's Bench),

RESPONDENT.

and

JAMES HARDISTY SMITH,

MIS-EN-CAUSE.

RECORD.

In the Superior Court.

No. 1.

Declaration or Statement of Claim attached to Writ, dated 29th April, 1892.

Province of Quebec, District of Montreal. } Superior Court.

Alexander Stewart, - - - - - Plaintiff.

vs.

John MacLean, - - - - - - Defendant.

and

James Hardisty Smith, - - - - - *Mis-en-cause.*

The Plaintiff, as described in the annexed writ of summons, complains of the Defendant, as therein also described and declares:—

10 1. That heretofore, to wit, at Montreal, on the thirty-first day of December, 1886, the said Plaintiff and Defendant, together with the said James Hardisty Smith, entered into certain articles of partnership, before Griffin,

RECORD.

In the Superior Court.

No. 1. Declaration or Statement of Claim attached to Writ, dated 29th April, 1892—*continued.*

Notary Public, whereby they covenanted and agreed to form a co-partnership as merchants for the term of five years, to be reckoned from the first day of January then next, at the City of Montreal, under the name and firm of "John MacLean & Company."

2. That previous to, and on the said thirty-first of December, 1886, the said John MacLean had been for some years and then was, with another, carrying on business in Montreal, under the said firm name of John MacLean & Company.

3. That by the said articles of partnership it was further agreed between the said parties as follows:—

"The said John MacLean shall contribute the amount standing at his credit in the books of the late firm of John MacLean & Co'y, to wit: all his title and interest in the assets of the said firm at that date.

The said Alexander Stewart and James Hardisty Smith will each contribute the respective amounts standing at their credit on deposit in the books of the late firm of John MacLean & Co. at the thirty-first day of December (then) instant, which sums are to be by them deposited to the credit of the firm on the said last mentioned day."

The whole as appears from a Notarial copy of the said articles of co-partnership fyled herewith as Plaintiff's Exhibit Number One.

4. That in virtue of the aforementioned provisions of the said articles of partnership, the said parties thereto entered into partnership on the first day of January, 1887, each partner contributing to the capital of the said firm of John MacLean & Co., as follows: John MacLean, the amount of four thousand, four hundred and eighty dollars and ninety-one cents ($4,480.91); Alexander Stewart the amount of twenty-five thousand, two hundred and ninety-two dollars and forty-seven cents ($25,292.47), and James Hardisty Smith the amount of thirty thousand, three hundred and fifty dollars and ninety-six cents ($30,350.96), as fully appears from detailed statements of the partners' respective capital accounts taken from the books of the said firm, and fyled herewith as Plaintiff's Exhibits Numbers Two, Three and Four.

5. That the three sums last aforesaid form united the sum of sixty thousand, one hundred and twenty-four dollars and thirty-four cents ($60,124.34), which represents the amount of capital of the said firm on the first day of January, 1887.

6. The said partnership was continued for over four and a-half years to the twenty-second day of July, 1891, and the said capital accounts (Exhibits Two, Three and Four) of the said partners, then showed that to the credit of the said Stewart there stood the sum of seventeen thousand, one hundred and eighty-five dollars and eighty-two cents ($17,185.82); to the credit of the said Smith the sum of twenty-seven thousand, three hundred and seventy-nine dollars and fifty-four cents ($27,379.54), and to the DEBIT of the said MacLean, the sum of twenty-nine thousand and seventy-nine dollars and thirty-one cents ($29,079.31), meaning that the said Defendant had not only withdrawn all his capital from the said firm, but had withdrawn $29,079.31 of the capital of Plaintiff and said Smith leaving to the credit of capital account fifteen thousand,

four hundred and eighty-five dollars and eighty-five cents (15,485.85), as also appears from the capital account fyled herewith as Plaintiff's Exhibit Number Five.

7. That on the twenty-second day of July, 1891, the said partners made a judicial abandonment of their property to their creditors, as appears from a certified copy thereof fyled herewith as Plaintiff's Exhibit Number Six, but said overdraft was not an asset of said partnership, and recognized not to be such by Defendant and the firm's creditors.

8. That the sum last aforesaid of $15,485.85 was the actual capital of the firm on the said date of the twenty-second of July, 1891.

9. That the said MacLean by reason of his said overdrafts had not only withdrawn the whole of his capital, but had depleted the capital of the said Stewart and Smith in the sum of $29,079.31, being the difference between the sum of the amounts standing to the credit of the said Capital account of the said Stewart and Smith, and the actual capital of the firm, the whole as more fully appears from a statement of account fyled herewith as Plaintiff's Exhibit Number Seven.

10. That at the date of the said abandonment, the said John MacLean had no share in the said firm, but was, on the contrary, the personal debtor of the said partners Stewart and Smith for the amount of the said overdraft of $29,079.31.

11. That the said last mentioned sum was drawn by the said MacLean from the capital of his fellow partners, and from the thirty-first day of December, 1888, the date when the said overdraft began, to the date of the failure, eighteen thousand and twenty dollars and twenty-five cents ($18,020.25) were drawn from their said capital and expended by him for private purposes only, as appears from Plaintiff's Exhibit Number Two.

12. That Defendant submitted a statement of the assets and liabilities of the said firm to the creditors, in which the "surplus is stated to be $15,369.58" (correctly $15,485.85) which sum represents the capital of Plaintiff ($17,185.82), and that of said Smith ($27,378.54) added together amounting to $44,564.36, less the amount of the said Defendant's overdraft, namely, $29,079.31, and upon said statement and exhibit of the affairs of the estate, the Defendant purchased the assets of the estate for fifty cents in the dollar on the amount of ordinary claims, and the payment of privileged claims in full, as appears from a copy of his offer of composition fyled herewith as Plaintiff's Exhibit Number Eight.

13. That the said overdraft was not an asset of the late firm of John MacLean & Company, but was actually a portion of the capital of Plaintiff and Smith, taken and appropriated by Defendant, and recognized by him so to be.

14. That Defendant is bound to pay to Plaintiff the proportion of said overdraft, which his, Plaintiff's capital, bore to the total capital of himself and said Smith, on the twenty-second day of July, 1891, to wit, the sum of eleven thousand two hundred and thirteen dollars and twenty cents, as more fully appears from a statement of account fyled herewith as Paintiff's Exhibit Number Nine, which said sum Plaintiff is entitled to have and receive from the said Defendant.

15. The Defendant has frequently acknowledged to owe, and promised to pay the said last-mentioned sum, but now refuses and neglects so to do.

RECORD.

In the Superior Court.

No. 1. Declaration or statement of Claim attached to Writ, dated 29th April, 1892—*continued.*

Wherefore, Plaintiff, praying acte of his willingness to enter into the taking of or rendering any further account, if deemed necessary by the Court, brings suit and prays that the Defendant may be adjudged and condemned to pay the Plaintiff the sum of eleven thousand, two hundred and thirteen dollars and twenty cents with interest thereon, and that the said *mis en-cause* may be made a party hereto in order to hear the judgment to be pronounced herein, the whole with costs of suit and exhibits, *distraits* to the undersigned Attorneys.

Montreal, April 29th, 1892.

MACMASTER & MCGIBBON,
Attorneys for Plaintiff.

No. 2. Pleas, dated 26th September, 1892.

Canada,
Province of Quebec, } In the Superior Court.
District of Montreal,

Alexander Stewart, - - - - - Plaintiff.

vs.

John MacLean, - - - - Defendant.

and

James Hardisty Smith, - - - - *Mis-en-cause.*

And said Defendant for plea to Plaintiff's action saith;

1 to 3. That he admits paragraphs First to Third of Plaintiff's declaration.

4 & 5. That he denies that the amounts mentioned in paragraphs Fourth and Fifth of Plaintiff's declaration represent the capital of the partnership entered into on the first day of January, eighteen hundred and eighty-seven (1887), or of each of the members thereof.

6. That he admits said partnership was continued until the twenty-second day of July, eighteen hundred and ninety-one (1891), but denies that the amounts mentioned in the Sixth paragraph of Plaintiff's declaration and as appears from Plaintiff's Exhibit Two, Three and Four, represent the capital of the said partners on said date.

That Defendant also denies the correctness of Plaintiff's Exhibit No. 5.

7. That it is admitted that a judicial abandonment was made by the said firm of John MacLean and Co., on the twenty-second day of July, eighteen hundred and ninety-one (1891), but it is not admitted that the pretended indebtedness of Defendant, if such existed which he does not admit, but, on the contrary, denies, was not an asset of the said partnership; but, on the contrary, that any such pretended indebtedness on the part of the said Defendant as a partner in the said firm was an asset thereof.

8. That the Eighth paragraph of Plaintiff's declaration is not admitted, but is denied.

9. That the Ninth paragraph of Plaintiff's declaration is not admitted, and Defendant further alleges that if any such pretended indebtedness existed, which he does not admit, but, on the contrary, denies, the same was a liability to and an asset of the firm of which he was a member.

10. That the Tenth paragraph of Plaintiff's declaration is not admitted, but denied; and further, that if any such pretended indebtedness existed, on the part of the Defendant, which he does not admit, but, on the contrary, expressly denies, the same was a liability to and an asset of the said firm of which he was a member.

11. That the Eleventh paragraph of Plaintiff's declaration is not admitted, but is denied.

12. That any offer of composition made by the Defendant was made to the Creditors of the firm entitled as such to rank upon the assets thereof and expressly stipulated for the transfer of all assets to himself personally, and specially stipulated for a discharge for his co-partners including the Plaintiff as well as for himself.

13, 14 and 15. That he specifically denies the allegations contained in the Thirteenth, Fourteenth and Fifteenth paragraphs of Plaintiff's declaration and each of them, and denies any liability on his part towards the Plaintiff.

And said Defendant further saith that each, all and every the allegations, matters and things in Plaintiff's declaration contained is and are false and untrue and specially denied.

Wherefore, the Defendant prays that the said action may be hence dismissed with costs including costs of all Exhibits *distraits* to the undersigned attorneys.

Montreal, 26th September, 1892.

(Signed), ATWATER & MACKIE,
Attorneys for Defendant.

And said Defendant, without waiver of the foregoing plea, but reserving to himself the full benefit thereof for further plea to the Plaintiff's action and demand saith :—

That each, all and every the allegations, matters and things in Plaintiff's declaration contained except as may be hereafter specially admitted to be true, are false and untrue and are hereby specially denied.

That if any sum or sums of money are chargeable against the account of the said Defendant as alleged in Plaintiff's declaration, which Defendant does not admit, but, on the contrary, denies, such indebtedness is a liability on the part of the Defendant to the said firm of John MacLean & Co., and is an asset thereof.

That said Defendant has paid and discharged to the acquittal of the said Plaintiff large sums of money to the Creditors of the said firm of John MacLean & Co., a proportion of which far exceeding the amount claimed in the present action was, and is chargeable against the said Plaintiff, and which the said Plaintiff had an interest in having paid, which said sums far exceed the sum of one hundred thousand dollars, and said Defendant when he so paid and

RECORD.

In the Superior Court.

No. 2. Pleas dated 26th September, 1892— *continued.*

discharged the debts of the said firm of John Maclean & Co. expressly stipulated as one of the conditions of the payment of the said debts that a full and complete discharge should be granted to the members of the firm of John MacLean & Co'y and to the present Plaintiff, which discharge and acquittal has been granted.

That when the said Defendant paid and discharged the obligations of the said firm of John MacLean & Co., the Plaintiff's share in which far exceeded the amount claimed by the present action, the said Defendant was subrogated in all the rights of the Creditors of the said firm, whose claims were so discharged against the remaining members thereof.

That the said Plaintiff is, in consequence, indebted to the Defendant in a sum far in excess of the amount claimed by the present action which the said Defendant is entitled to have compensated and set off against the same.

Wherefore, the said Defendant prays that the said Plaintiff may be declared to be indebted to the Defendant in a sum far in excess of the amount claimed by the present action; that the said action be declared to be compensated and set off by the said indebtedness, and to be hence dismissed, the whole with costs *distraits* to the undersigned attorneys.

Montreal, 26th September, 1892.

(Signed) ATWATER & MACKIE,
Attorneys for Defendant.

And said Defendant, without waiver of the foregoing plea, but reserving to himself the full benefit thereof for further plea to Plaintiff's action and demand saith :—

That each, all and every the allegations of said declaration, except as may be specially admitted to be true, is and are false and untrue and hereby denied.

That if any sum or sums of money are chargeable against the account of the said Defendant as alleged in Plaintiff's declaration, which Defendant does not admit, but, on the contrary, denies, such liability is a liability on the part of the Defendant to the firm of John MacLean & Co., and is an asset thereof.

That the said Defendant has paid and discharged to the acquittal of the said Plaintiff large sums of money to the Creditors of the said firm of John MacLean & Co., a proportion of which, far exceeding the amount claimed in the present action, was, and is chargeable against the Plaintiff, and which the Plaintiff would have been obliged to pay had the said payment not been made by the said Defendant under the express stipulation and condition that the Plaintiff should be fully and completely discharged and freed from all liability in connection therewith, and which discharge and acquittal to the Plaintiff has been granted by the said Creditors.

That when the said Defendant paid and discharged the obligations of the said firm of John MacLean & Co., as aforesaid, and as appears from Plaintiff's action and Exhibits filed in support thereof, and in which obligations and liabilities of the said firm of John MacLean & Co., the Plaintiff's share exceeded the amount claimed by the present action, the said Defendant was subrogated

in all the rights of the Creditors of the said firm, against the other members of the said firm and against the Plaintiff, and, the said Plaintiff is indebted to the Defendant in a sum far exceeding the amount claimed in the present suit.

That the only moneys which have been drawn by or paid to said Plaintiff have been so drawn in accordance with the articles of partnership of said firm as appears from Plaintiff's Exhibit Number One, and Defendant has never exceeded the amount which he was entitled to draw under the said agreement, and, as a matter of fact has never received from the said firm as much as he was entitled to draw in and by said partnership agreement.

That the said Plaintiff has always had charge of the books of account of the said firm and of the private ledger in which the capital account of the said partners was entered, and said Plaintiff has failed and neglected to prepare and keep proper balances as stipulated in the said deed of agreement; has retained the said private ledger and other books of account in his possession, and has refused and neglected, though frequently requested by the Defendant to show the Defendant the said books of account or allow him access thereto, and, said Plaintiff has, moreover, retained and still retains the keys of the said private ledger, and has refused and still refuses to allow the said Defendant to have the same and has prevented the said Defendant from examining the said books on divers occasions with a view of keeping the said Defendant in ignorance of the position of the affairs of the said partnership and of the exact position of the said private accounts of the individual members of the said partnership.

That any capital contributed by the said Plaintiff and the said Smith to the firm became part of the assets thereof, and any and all drawings which the said Defendant has made upon the assets were so made in accordance with the terms of the agreement between the said partners and with the full knowledge and consent of his co-partners, and particularly of the Plaintiff who had sole charge of the books of account of the firm.

That the said Plaintiff has made erroneous and misleading entries in the books of account of the said firm, and particularly in the private ledger and said Plaintiff's Exhibit Number Two is a false and erroneous and misleading statement of the capital account of the Defendant, more particularly in charging against the said capital account the yearly drawings of the said Defendant which were made in accordance with the terms of the partnership agreement between the partners, and which amounts should have been charged against the current account of the said partnership and not against the capital account of the said Defendant.

That the other items of the said capital account are for the profits and losses made and incurred in the regular course of the said firm's business, and any liability or balance due by the Defendant in respect of the same was a liability to and asset of the said firm of John MacLean & Co., and of the creditors thereof, and the said Defendant might have been called upon by the said firm and by the creditors thereof to make good and to repay the same into the estate for the common benefit of the creditors.

Wherefore, said Defendant prays that the said Plaintiff's claim be declared to be compensated and set off by the indebtedness of said Plaintiff to Defend-

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In the Superior Court.

No. 2. Pleas dated 26th September, 1892—*continued.*

ant, and that said action be hence dismissed with costs *distraits* to the undersigned attorneys.

Montreal, 26th September, 1892.

(Signed) ATWATER & MACKIE,
Attorneys for Defendant.

And said Defendant, without waiver of the foregoing plea, but reserving to himself the full benefit thereof for further plea to the action and demand of the Plaintiff saith :—

That each, all and every the allegations, matters and things in said declaration herein contained, except as may be specially admitted to be true, is and are false and untrue and are hereby denied.

That the said Defendant has never overdrawn his account in the firm of John MacLean & Co. as falsely alleged in Plaintiff's declaration herein.

That the Defendant has never drawn or been paid any sum or sums of money whatever excepting such as were provided for, authorized and agreed upon by the deed of partnership fyled as Plaintiff's Exhibit Number One.

That the statements fyled as representing the capital of the said firm are false and erroneous and misleading, more particularly Plaintiff's Exhibit Number Two, purporting to be a statement of the capital account of the said Defendant.

That the said Exhibit Number Two is more particularly false and misleading inasmuch as the drawings of the said Defendant provided for as above-mentioned in said deed of agreement are entered therein, whereas the said drawings should have been charged against the current account of the said firm of John MacLean & Co., and not against the said capital account of the said Defendant.

That if any liability still appears on the said statement of Defendant's capital account, the same was and is a liability to and an asset of the said firm of John MacLean & Co., and not of the individual members thereof.

That at the time of the composition made by the said Defendant with the creditors of the said firm of John MacLean & Co., the curator to the said estate as representing the said creditors, the said creditors themselves, and the inspectors, well knew of such indebtedness, if any there was, on the part of the said Defendant to the estate of John McLean & Co.

That if any such indebtedness existed at the time of the abandonment of the said estate of John MacLean & Co., the same was an asset of the said estate and of the creditors thereof and was abandoned by the said firm of John MacLean & Co., along with its other assets.

That the offer of composition made by the Defendant to the curator and to the creditors for the assets and estate of the said firm was accepted, and the curator was duly authorised to accept the said composition by judgment of one of the Honorable Judges of this Court bearing date the day of eighteen hundred and ninety (189), and a copy of which is herewith produced, and the said estate, assets and effects, including any liability of the Defendant to said firm and to the estate thereof was duly transferred to him in

accordance with the said order by deed passed before Marler, Notary Public, on the sixth day of November, eighteen hundred and ninety-one (1891), a copy of which is herewith produced to form part hereof.

That when the Defendant purchased the estate, and when the same was transferred to him he became the owner and possessor and was put in possession of any and every claim which the said firm might have had against him and any debt or liability on his part towards the said firm or towards the partners thereof, and towards the Plaintiff as alleged in his declaration herein became and was and is extinguished by confusion.

That Defendant is not liable in any way to Plaintiff as claimed by his declaration herein, which declaration and demand is false in fact and unfounded in law.

Wherefore, the said Defendant prays that the said action of Plaintiff may be hence dismissed with costs including costs of all exhibits *distraits* to the undersigned attorneys.

Montreal, 26th September, 1892.

(Signed) ATWATER & MACKIE.
Attorneys for Defendant.

Province of Quebec, District of Montreal, } Superior Court,

No. 3. Answers to Pleas dated 15th October, 1892—

Alexander Stewart,	- - -	Plaintiff.
	vs.	
John MacLean,	- - -	Defendant.
	and	
James Hardisty Smith,	- - -	*Mis-en-cause.*

And for answer to Defendant's plea firstly pleaded, the said Plaintiff saith :—

1. He persists in all the allegations of his said declaration, and the same are, and each of them is, true and well founded.

2. The Defendant's said overdraft of twenty-nine thousand and seventy-nine dollars and thirty-one cents was not an asset of the late firm of John MacLean & Company, and said Defendant was and still is the personal debtor of the said partners, Stewart and Smith in the amount of the said overdraft.

3. All the allegations of the said Defendant's plea which in any way conflict with the allegations of Plaintiff's declaration are false and untrue, and Plaintiff denies the same and each of them.

Wherefore, Plaintiff prays for the dismissal of the said plea, with costs *distraits* to the undersigned attorneys, and further prays as in and by his declaration he hath already prayed.

Montreal, October 15th, 1892.

MACMASTER & MCGIBBON,
Attorneys for Plaintiff.

RECORD.

In the Superior Court.

No. 3. Answers to Pleas dated 15th October, 1892—*continued.*

And without waiver of the foregoing answer to plea, for answer to the Defendant's plea secondly pleaded, the Plaintiff, persisting in all the allegations of his said declaration, saith :—

1. All the allegations of the Defendant's said plea which in any way conflict with the allegations of his declaration are false and untrue, and Plaintiff denies the same and each of them.

2. Defendant's said overdraft is not an asset of the late firm of John MacLean & Company, and is not a liability of Defendant thereto.

3. If Defendant paid certain sums of money to creditors of the late firm of John MacLean & Co., to Plaintiff's acquittal, which Plaintiff does not admit, but expressly denies, the same were fully offset and compensated by all the "assets and estate generally" of the said firm, as stipulated by the said Defendant in his offer of settlement (Plaintiff's Exhibit Eight,) and received by him as full and ample consideration for the payment of said sums to his own and his partners acquittal; and furthermore, Plaintiff says that if any sum was paid by Defendant to the Curator of the estate of John MacLean & Company or to the Creditors of the said firm it was upon the condition that the assets of the said firm should be transferred to the said Defendant "individually," and such assets were so transferred to the said Defendant, and said Defendant, on such transfer received value and consideration for any payments then made by him, or to be made, and cannot now pretend to claim a second advantage for such payments by setting them off against the sum he individually owes to Plaintiff.

4. Plaintiff praying acte of Defendant's allegation that a full and complete discharge was granted by the creditors under said settlement to the members of the firm of John MacLean & Company and to the present Plaintiff, alleges that thereby the said creditors relinquished all rights and claims against the said Plaintiff, and Defendant cannot now claim anything from Plaintiff under said alleged subrogation or otherwise.

5. The Defendant was himself individually, as a partner of the said firm indebted for the full amount of the claims of the creditors of the said firm.

6. Plaintiff is not indebted to said Defendant in any sum whatever.

Wherefore, Plaintiff prays the dismissal of Defendant's plea secondly pleaded, with costs *distraits* to the undersigned attorneys, and further prays as in and by his declaration he hath already prayed.

Montreal, October 15th, 1892.

MACMASTER & MCGIBBON,
Attorneys for Plaintiff.

And without waiver of the foregoing answers to pleas, but reserving to himself the benefit thereof, the Plaintiff for answer to the plea thirdly pleaded by the said Defendant, saith :—

1. All the allegations of the said plea thirdly pleaded are false and untrue and Plaintiff denies the same and each of them.

2. The Defendant's overdraft, and the balance standing at his debit in the capital account is not an asset of the firm of John MacLean & Company, and is not a liability of Defendant thereto.

3. The said Plaintiff is not indebted to Defendant in any sum of money whatever, and the Defendant is not entitled to set off or compensate any sum against Plaintiff by reason of the matters set forth in the said plea.

4. The Defendant had no right to withdraw from the said partnership business the sum of six thousand dollars per annum, and was not entitled to any salary or allowance from the said partnership business other than stipulated in the articles of partnership.

5. By the said articles of co-partnership, each partner was entitled to interest on his capital, and the net proceeds of the business, after deduction of bad debts, depreciation of stock and of said interest on capital, and of all charges and expenses incurred in carrying on the business were to be divided between the partners in proportion as specified in the said articles of co-partnership.

6. The drawings of the Defendant, and of the Plaintiff and the other partner Smith, were not and were never treated as expenses incurred in carrying on the said business, but were properly treated as charges against the individual capital of each partner, and Defendant was not entitled to withdraw any sum whatever from the said co-partnership business under the clause referred to in the said plea, when his capital had become exhausted.

7. The fact that the Defendant did so withdraw sums from the said business that he was not entitled to withdraw, does not deprive the Plaintiff of the recourse taken by him in his said declaration.

8. The books of accounts of the said firm were correctly kept, and the statements prepared half yearly showing the condition of the business, were exhibited to the Defendant, and the method of keeping the said books, and the said statements were approved by the Defendant.

9. It is utterly untrue and specially denied, that the Plaintiff has ever refused or neglected to show to the Defendant the books of account of the said firm, or to allow him access thereto, or that he ever prevented the Defendant from obtaining the fullest knowledge of the contents of the books of the said firm, and of the exact position of the private accounts of the individual members of the said firm.

10. As to the private ledger referred to in the Defendant's said plea, the same was delivered up with the other books of account to the Curator who took charge of the partnership estate, and the Plaintiff has never since had the possession and control thereof; and the Defendant had a key for the said private ledger and free access thereto.

11. The Plaintiff kept a book giving an analysis of the cost of merchandise, the cost and charges of carrying on the business of the said firm, which said book was frequently examined by the said Defendant; but said book was entirely supplementary to the books used for the purposes of the firm business, and was merely used as a convenient method of checking the cost of merchandise and the growth or decrease of costs and charges in connection with the carrying on of the business from year to year; and Plaintiff now brings the said book into Court, and fyles it with his answer to plea as Plaintiff's Exhibit Number Ten, and prays acte thereof.

12. Plaintiff specially denies that he has been guilty of any concealment whatever in respect to the firm's business, or the accounts of the respective

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In the Superior Court.

No. 3. Answers to Pleas dated 15th October, 1892— *continued.*

partners, and avers that the accounts kept by him were proper and correct in all respects.

Wherefore, Plaintiff prays that the Defendant's plea thirdly pleaded may be hence dismissed with costs *distraits* to the undersigned attorneys, and further prays as in and by his declaration he hath already prayed.

Montreal, October 15th, 1892.

MACMASTER & MCGIBBON,
Attorneys for Plaintiff.

And the said Plaintiff, for answer to the plea fourthly pleaded by the said Defendant, and without waiver of the foregoing answers, says:—

1. All the allegations of the said fourth plea, which are inconsistent with the allegations of the Plaintiff's declaration, are false, and the Plaintiff denies each and all of them.

2. It is untrue and is specially denied that the Defendant by his purchase of the partnership estate of John MacLean & Co., became the owner and possessor, and was put in possession of any and every claim which the Defendant's partners might have against him.

3. The Defendant did not purchase from the Curator of the estate of John MacLean & Co., or from the creditors thereof his indebtedness and liability towards his co-partners, Plaintiff and Smith;

Wherefore, Plaintiff prays that the Defendant's said fourth plea may be hence dismissed, and further prays as in and by his declaration he hath already prayed.

Montreal, October 15th, 1892.

MACMASTER & MCGIBBON,
Attorneys for Plaintiff.

No. 4. Deposition of John MacLean produced by Plaintiff on 5th Dec., 1892—

On this fifth day of December, in the year of Our Lord, one thousand eight hundred and ninety-two, personally came and appeared, John MacLean, of the City of Montreal, Merchant, aged forty-eight years, and witness produced on the part of the Plaintiff, who, being duly sworn, deposeth and saith:—I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

Q. You are the Defendant in this case?

A. Yes.

Q. You carried on business in co-partnership with the Plaintiff, Alexander Stewart, and James Hardisty Smith, in the City of Montreal, did you not?

A. Yes.

Q. Under the firm name of John MacLean & Company?

A. Yes.

Q. That partnership dated from what date?

A. It dated from the thirty-first of December, one thousand eight hundred and eighty-six (1886).

Q. Before the date of the commencement of that partnership, were you also carrying on business in Montreal under the name of John MacLean & Company?

A. Yes.

Q. That was another partnership altogether?

A. Yes, that was another partnership.

Q. While that other partnership was going on, Mr. Stewart and Mr. Smith had some connection with the firm, had they not?

A. No connection, except putting in a deposit of money, but the arrangement was to come in on the first of the year.

Q. Well, before they actually became partners, they each had some money deposited in the firm?

A. Yes, they each had some money deposited in the firm before they became partners.

Q. And they were thus in connection with the business?

A. Yes.

Q. Do you remember from memory how much Mr. Stewart had in and how much Mr. Smith had in the business?

A. Mr. Stewart had twenty-five thousand dollars ($25,000.00), and Mr. Smith had thirty thousand dollars ($30,000.00).

Q. Now the deed says the partnership was to be one for five years, but before the five years the partnership made an abandonment of the estate to Mr. Riddell for the benefit of the creditors to the Court?

A. Yes.

Q. Do you remember the date of that now?

A. The date was the twenty-second of July, one thousand eight hundred and ninety-one (1891).

Q. Sometime before that, Mr. MacLean, the firm had ceased payments, had they not?

A. About five weeks before that they had ceased payments.

Q. That was about the sixteenth of June, one thousand eight hundred and ninety-one (1891)?

A. Yes, about the sixteenth of June, one thousand eight hundred and ninety-one.

Q. Now I see there is provision in the articles of the partnership for having a balance-sheet,—were balances regularly taken from the books of the firm?

A. They were regularly taken half-yearly.

Q. That would be at the end of June and the end of December?

A. Yes.

Q. And what would these balances intend to show?

A. Well, I could hardly say; in fact, I do not think that ever a balance was shown to the three partners during the time we were in business. That I am certain of, not to the three was one ever shown.

Q. Well, whether they were actually shown or not to the three, tell us what the balance is? What is the object of the balance-sheet? What is it supposed to show?

RECORD.

In the Superior Court.

No. 4. Deposition of John MacLean, produced by Plaintiff on 5th Dec., 1892— *continued.*

A. It is supposed to show the state of our business.

Q. The assets and liabilities ?

A. Yes, it will show the assets and liabilities.

Q. Does it show the surplus, if any ?

A. It ought to, if it is a proper balance-sheet.

Q. It should show the surplus ?

A. It should show everything.

Q. Well, it would show all the assets and liabilities, and then according as there was a surplus or deficiency it would show that surplus or deficiency ?

A. Yes, a proper balance-sheet should.

Q. It would show every liability in connection with the business ?

A. Certainly it would.

Q. Well, now, were these balance sheets that you have spoken of, put in a book and bound together, or placed together in a book ?

A. The private ledgers which I have with me will show the balance sheets.

Q. This book that you have spoken of I see is marked private ledger on the outside and J. MacLean & Company ?

A. Yes.

Q. Is that the book you have just spoken of ?

A. Yes, that is the book.

Q. Which is marked private ledger, J. MacLean & Company ?

A. Yes, there is another down there on the table marked "Private Ledger."

Q. Is there not another book other than these two that contain the balance sheets of the firm ?

A. There will be the general books of the firm, which will show that. I may say I have never kept books since I have been in business—never been the office man—not made one figure.

Q. I only want to know the extent of your knowledge ?

A. I am an outside business man, and did the outside work and bought and sold. Mr. Stewart was purely and simply in charge of the office.

Q. I am asking you now if there is not another book and if there was not another book used in connection with the firm besides the two private ledgers which are now before us which contain these balance sheets ?

A. Not that I am aware of, but if there are in the house, they will be brought here.

Q. I sent a notice which perhaps the particulars did not reach you, to produce a book of that kind,—the book containing the trial balances of the firm taken yearly and half yearly since its commencement ?

A. There are no books but which can be produced here that are in the establishment, or were handed over to me by Mr. Riddell when I took possession.

Q. Mr. Tyler has gone down to the office to look for that book ?

A. Yes, he is my clerk.

Q. You say that Mr. Stewart, the Plaintiff, had charge of the books of the firm ?

A. Yes; he had charge of the books of our firm.

Q. And that he kept them I suppose throughout?

A. Entirely the private books.

Q. And for the public books, you had a bookkeeper besides?

A. Yes, two or three with his assistance.

Q. Well, did you ever have any occasion to find any fault with Mr. Stewart's method of either keeping the books, or of directing the keeping of them?

A. Well, the trouble,—he was a little close in those matters, and if those things had been made public, at the very start, the first six months or so, we would have been all called together and gone over those matters, and even the keys of those books are kept by him yet. We had to break the books open.

Q. That is not what I am asking you. What I asked you was, had you ever occasion to find any fault with the accuracy of Mr. Stewart's methods of keeping in the books the entries relating to the business?

A. No, I never made any complaint,—never said anything. The only thing I may say is once I asked him for a statement and he told me to go to his drawer and get it, which those books contained, and for which I could have asked the keys, if I had wanted them, as they were in the drawer, and our relations after that were of a strained nature.

Q. He told you that you could go and get them for yourself, that the keys were in the drawer?

A. Yes.

Q. You could have done that, I suppose?

A. Yes, under a good deal of trouble.

Q. Well, Mr. MacLean, was there not another private ledger besides these two that are before you on the desk here?

A. Not that I am aware of; but if there is such a book, I am not aware that I have seen another.

Q. Mr. Stewart tells me that there is another, so no doubt it will be found?

A. Yes, if there is another, there is no doubt but that it will be found, unless it has been taken away from the business during my absence in England. Mr. Stewart kept my office while I was tendering for my stock.

Q. Well, you do not pretend that Mr. Stewart had taken the book?

A. Mr. Stewart, Mr. Riddell and my book-keeper had charge of the office.

Q. You do not pretend that Mr. Stewart had taken the book?

A. No, not for a moment.

Q. Well, of course, when you were in England you could not be watching every book in the establishment?

A. No, I could not.

Q. Do you remember that during the continuance of this firm with Mr. Smith and Mr. Stewart, that the old private ledger became full of entries, and that a new one was purchased? Do you remember the circumstances?

A. That I am not positive about,—everything connected with the office work was entirely left to the office. I should have looked a little more after them.

Q. I only want to apply to your information whether you remember the circumstances that a new book was bought when the old one was filled?

A. This book is entirely new. There is nothing old about this, that is the book which is marked Private Ledger, I am speaking of.

RECORD.

In the Superior Court.

No. 4. Deposition of John MacLean, produced by Plaintiff on 5th Dec., 1892—*continued.*

Q. There is still another, Mr. Stewart tells me, which is missing. Well, now, speaking of this private ledger,—this new looking one, do you remember that when that was brought to the office, that Mr. Stewart had two keys and that he gave you one ?

A. No.

Q. You do not remember that ?

A. I would not say positively, but if Mr. Stewart says he did give me a key, there is no doubt about it but that he did.

Q. Mr. Stewart informs me that he gave you a key, and would you be satisfied with that statement ?

A. Yes. If he says so, it was so.

Q. Of course you were the business man, you were the purchaser, and you had the experience in buying in England and understood the trade, and you may not have had much to do with the books, but I want to understand, as a matter of fact, whether, if you wished at any time, you could have looked at any one of these books, private ledgers or any other books of the establishment ?

A. There is no question but that I could have done it. I could have forced these things if I had asked, but the relations were a little strained, and it was not done.

Q. However, did Mr. Stewart ever refuse to give you any book that you wanted to see ?

A. He refused once to give me a statement, and asked me to go to his drawer for it.

Q. He told you it was in the drawer ?

A. Yes ; I could find it in his drawer. I said I had not come to that yet.

Q. Did he ever refuse you access to your books ?

A. No, he did not.

Q. I understand this office was an office about twenty-four feet square ?

A. Yes, somewhere about that.

Q. And you and Mr. Stewart sat at the same desk in the office,—opposite sides of it ?

A. Yes,—well my department was outside.

Q. But when you came in the office, you had the opposite side of the same desk, facing each other ?

A. Yes ; we were at the same desk, facing each other.

Q. In that large room there was a vault ?

A. Yes.

Q. And inside the vault there was a safe ?

A. Yes.

Q. And inside the safe there were the books ?

A. Yes.

Q. And they were accessible to all the partners ?

A. Yes, they were accessible to us all.

Q. Well, you have led me to believe something to-day that I was not aware of before, viz., that the relations were personally a little strained between you,—you had a little difference ?

A. Well, we were not suited to each other.

Q. Incompatibility?

A. Yes.

Q. You told us that there were balances taken off every six months?

A. There should have been. The stock was taken every six months. Usually, I may say, it was my work to be on the other side, when stock was taken, at that time of the year.

Q. Now, according to my understanding of books, which may not be very much, these balance sheets, in a well regulated firm, are usually kept from six months to six months, so as they can be looked at in a book of some sort, or in some way that they can be accessible; is not that the right way to do the thing?

A. Yes, it should be the right way.

Q. This book that we have been looking at called "Ledger Balances" only starts at December, one thousand eight hundred and ninety (1890), so we would require to get the books before that,—to have them consecutively?

A. I will telephone for them.

Q. While we are waiting for the books: You told us that the partnership made an abandonment of the estate to the court, and Mr. Riddell, I believe, was appointed the curator to that estate?

A. Yes, I believe Mr. Riddell was appointed curator.

Q. The partners were allowed interest on their capital and charged interest on their overdraft?

A. Yes, it seems so.

Q. Well, that would be perfectly right, would it not?

A. That I cannot say.

Q. Did you ever raise any objections to that?

A. No, I never raised any objection to it.

Q. Would not that be the regular thing to do, if a partner was allowed interest on his capital, that he should be charged interest on his overdraft?

A. I am not rather sure of these matters. I think that is a question of law.

Q. Now I understand that you are not able to find the trial balances for the first year of the business, that is from the first of January, one thousand eight hundred and eighty-seven (1887) to the first of January, one thousand eight hundred and eighty-eight (1888)?

A. That I do not know.

Q. Well, you do not find it here among the books that have been produced?

A. I believe it is not there.

Q. Well, taking these two books marked "Ledger balances," they start out with December, one thousand eight hundred and eighty-eight (1888), and end with what date?

A. They end with December, one thousand eight hundred and eighty-nine (1889).

Q. Well, this first book goes from December, one thousand eight hundred

RECORD.

In the Superior Court.

No. 4. Deposition of John MacLean, produced by Plaintiff on 5th Dec., 1892—*continued.*

and eighty-eight, to December the thirty-first (31), one thousand eight hundred and eighty-nine (1889)?

A. Yes.

Q. And then the next book starts on the thirty-first (31) of December, one thousand eight hundred and ninety (1890), and goes right on until July, one thousand eight hundred and ninety-one (1891).

A. Yes.

Q. Well, now, it would appear from that that there is a trial balance for one year missing between the thirty-first of December, one thousand eight hundred and eighty-nine, and the thirty-first (31) of December, one thousand eight hundred and ninety (1890)?

A. That I do not know anything about.

Q. Is that the case that there is still a book missing from December, one thousand eight hundred and eighty-nine (1889) to December, one thousand eight hundred and ninety (1890)?

A. I do not know.

Q. As a matter of fact, in these two books, there is a year between the end of December, one thousand eight hundred and eighty-nine (1889), and the end of December, one thousand eight hundred and ninety (1890), that appears to be wanting?

A. Yes.

Q. Well, now, will you look at the Plaintiff's Exhibit Number Two, purporting to be your capital account from the books of the said firm, and compare it with the ledgers now before you, and state if it correctly represents your capital account as entered in the said books?

A. These are correct extracts. They are all copied correctly.

Q. Now, according to that statement Exhibit Number Two of the Plaintiff from the capital account, what is represented as being the overdraft against you on the thirty-first (31) of December, one thousand eight hundred and eighty-nine (1889)?

A. There is eleven thousand and twenty-nine dollars and ninety-nine cents ($11,029.99).

Q. Now, on the thirty-first (31) of December, one thousand eight hundred and eighty-nine (1889), did you and Mr. Stewart sign in the books a statement of the assets and liabilities of the firm, as appears from pages two hundred and eighteen (218) and two hundred and nineteen (219), of the private ledger now shown to you?

A. Yes. That was done by him (Stewart), coming in hastily to get this signed, as any business man would, saying he could not find Mr. Smith at the moment, but he was to get him. His (Mr. Smith's) signature is not here?

Q. That is the reason that Mr. Smith's signature is not here?

A. I will not say anything about that, but this was done in a moment when I was called at the back office, and naturally a partner would sign quickly.

Q. But you and Mr. Stewart signed?

A. Stewart signed first, saying he wanted my name. It was in the deed of co-partnership, and he wanted to show it to Sir Donald A. Smith, or see Sir Donald A. Smith about it.

Q. Now, you have no objection to fyling a copy of that statement?

A. Certainly not.

I fyle copy of the said two pages referring to the said statement from pages two hundred and eighteen and two hundred and nineteen of the private ledgers, as the Plaintiff's Exhibit A at enquete.

Q. I see in that statement that we are going to call Exhibit A at enquete, that the surplus is there represented as being forty-seven thousand one hundred and thirty-eight dollars and twenty-four cents ($47,138.24)?

A. Well, I presume it is correct.

Q. But it is so represented there, is it not?

A. Yes, it is so represented there in figures.

Q. Well, your bankers were the Merchants Bank of Canada at that time?

A. Yes, our bankers were the Merchants Bank of Canada at that time.

Q. Did you give a copy of that statement to the Bank, as representing the true condition of your business?

A. I am not aware. Mr. Stewart all the time we were in business attended to that.

Q. Did the Bank ask for a statement?

A. I am not aware. They may or may not. Mr. Stewart attended to that.

Q. Is this the letter-book of the firm?

A. It seems so. This is a book which I question if I have ever seen in the four and a-half years we have been in business,—certainly, not twice, if I have seen it once.

Q. This letter-book which I have shown to you is one of the letter-books put in the possession of the curator?

A. Yes.

Q. Well, now, I find in that letter-book, at page three hundred and five (305), the following letter:—

Montreal, 28th January, 1890.

"MR. MEREDITH,

Manager of the Merchants Bank of Canada.

"Dear Sir,

"Agreeable to your circular letter of the sixteenth instant, enclosed is statement showing the results of business to thirty-first of December, 1889, which is practically the same as a year ago.

"Any explanation either you or Mr. Hague may desire, I shall be pleased to call and give.

"Yours truly,

"(Signed) J. MACLEAN & Co."

Q. That seems to be in Mr. Stewart's handwriting, does it not?

A. Yes, it is Mr. Stewart's handwriting.

Q. And next to that is a statement dated December, the thirty-first (31), one thousand eight hundred and eighty-nine (1889), copied in the letter book?

A. Yes, at page three hundred and forty-four (344).

RECORD.

In the Superior Court.

No. 4. Deposition of John MacLean, produced by Plaintiff on 5th Dec, 1892— *continued.*

I will produce and fyle a copy of that statement, marked as Plaintiff's Exhibit "B" at enquete.

Q. That statement also shows the surplus to be forty-seven thousand one hundred and thirty-eight dollars and twenty-four cents ($47,138.24), just as the statement you signed in the books?

A. Yes.

Q. Now, Mr. MacLean, will you look at the two capital accounts, one for Mr. James Hardisty Smith and the other for Mr. Stewart, the Plaintiff in this case, and state if the Plaintiff's Exhibit Number Three and the Plaintiff's Exhibit Number Four, on the verso of that sheet, correctly represents the capital account of the said Messrs. Smith and Stewart, according to the books of the firm now exhibited to you?

A. Yes, they are quite correct, according to the books.

Q. Now you have previously told me that according to the books the amount standing at your debit in capital account was eleven thousand and twenty-nine dollars and ninety-nine cents ($11,029.99)?

A. Yes.

Q. That was on the thirty-first (31) of December, one thousand eight hundred and eighty-nine (1889)?

A. Yes.

Q. Now, I want you to tell me what was the amount standing to the credit of Mr. Stewart's account and to the credit of Mr. Smith's account, at that date, the thirty-first of December, one thousand eight hundred and eighty-nine (1889)?

A. To the credit of Mr. Smith's account there were thirty-four thousand and eighty-three dollars and ninety-seven cents ($34,083.97).

Q. Now take Mr. Stewart's account and let us know what stood to his credit?

A. To the credit of Mr. Stewart's account there were twenty-four thousand and eighty-four dollars and twenty-six cents ($24,084.26).

Q. Now, is it not the case that a surplus of forty-seven thousand one hundred and thirty-eight dollars and twenty-four cents ($47,138.24), contained in the statement of the thirty-first of December, one thousand eight hundred and eighty-nine (1889), signed by Mr. Stewart and yourself, is arrived at by adding together the amount standing at Mr. Stewart's credit at that date, namely, twenty-four thousand and eighty-four dollars and twenty-six cents ($24,084.26), and the amount at that date standing also to Mr. Smith's credit, namely, thirty-four thousand and eighty-three dollars and ninety-seven cents ($34,083.97), which sums aggregated fifty-eight thousand one hundred and sixty-eight dollars and twenty-three cents ($58,168.23), and deducting therefrom the amount standing at your debit in capital account, namely, eleven thousand and twenty-nine dollars and ninety-nine cents ($11,029.99)?

A. That is the way it is put in the statement here.

Q. Well, was not that the true method to arrive at the surplus in the business?

A. No, not quite. That is not the usual way you will find a co-partnership. We are each entitled to draw so much out.

Q. I am not talking about a question of drawing, because that is a legal question.

A. All the figures in this statement are correct as far as I can see. As I said I have taken no hand in this. I have done nothing in it. I am at the mercy of others in this matter, but I believe it to be correct.

Q. You do not think that Mr. Stewart rendered a false account to the Merchants Bank?

A. No, I do not think that; but I have been at the mercy of others in this matter.

Q. Well, now, in this statement showing the condition of your business rendered to the Merchants Bank and signed by you in your books, your drawings from the firm were charged against capital account?

A. That is all here.

Q. And all charged against capital account?

A. Yes, I believe it was charged that way.

Q. Now, I think you told us, or at all events, you told us indirectly, that the overdraft at the close of the business as appears from the books, was twenty-nine thousand and seventy-nine dollars and thirty-one cents ($29,079.31)?

A. Yes, that is shown by the statement.

Q. Now, shortly after you suspended payment, Mr. MacLean, did you have prepared to exhibit to the creditors a statement showing the assets and liabilities of the firm?

A. Yes.

Q. I believe that in that statement, although the firm had suspended payment, you still showed a small surplus?

A. Yes, in figures it showed.

Q. Can you remember, roughly, how much it showed?

A. About fifteen thousand dollars. Somewhere in the neighborhood of fifteen thousand dollars ($15,000).

Q. Is that a copy of the statement showing the assets and liabilities of the firm and the surplus?

A. As far as I know, it is correct.

Q. It is in the handwriting of the bookkeeper of the firm, Mr. Dodds?

A. Yes, it is in Mr. Dodds' handwriting.

Q. Of course, when you were making the offer to the creditors, you had to calculate upon the assets and liabilities of the firm?

A. Yes, but I was more determined to continue the business, and that nobody would ever finger a cent of the business of John MacLean & Company, once I got my hands on that business.

A statement is now fyled as Exhibit C of the Plaintiff at enquete, showing the assets, liabilities and a surplus of the firm.

Q. Now that statement C just shown to you, shows the assets to be one hundred and eighty thousand two hundred and five dollars and forty-nine cents ($180,205.49)?

A. Yes.

Q. Comprising stock, book debts, bills receivable, plant, Bank of Scotland, cash on hand in bank?

RECORD.

In the Superior Court.

No. 4. Deposition of John MacLean produced by Plaintiff on 5th Dec., 1892—*continued.*

A. Yes.

Q. And the liabilities would just aggregate that sum, less the amount of surplus you had, fifteen thousand three hundred and sixty-nine dollars and fifty-eight cents ($15,369.58)?

A. Yes, that is correct, as far as I know.

Q. This statement C is dated the thirtieth of June, one thousand eight hundred and ninety-one (1891)?

A. Yes.

Q. Now, will you look at the balances standing at the credit or debit of the respective capital accounts of the firm on that day, and state if the surplus of fifteen thousand three hundred and sixty-nine dollars and fifty-eight cents ($15,369.58) in the said statement C is not arrived at by deducting your overdraft of twenty-nine thousand and seventy-nine dollars and thirty-one cents ($29,079,31) from the sum of forty-four thousand five hundred and sixty-five dollars and twenty-six cents ($44,565.26), comprised of seventeen thousand one hundred and eighty-five dollars and seventy-two cents ($17,185.72), the amount at that date standing at the credit of Mr. Stewart's capital account, and twenty-seven thousand three hundred and seventy-nine dollars and fifty-four cents ($27,379.54), the amount at that date standing at the credit of Mr. Smith's account?

A. Yes, that is right according to the books.

Q. That is shown in the Plaintiff's Exhibit Number Seven, is it not?

A. Yes.

Q. In order to explain this statement C, and the position of the business on the thirtieth of June, one thousand eight hundred and ninety-one (1891), that expression "Bank of Scotland," I suppose, means a deposit of money you had to the credit of the firm in that Bank?

A. Yes.

Q. All the other items, like stock, book debts, etc., explain themselves?

A. Yes.

Q. This simply seems to be a short statement of the results of the business,—supposing we wished to analyze these assets, where would we find the details of them?

A. Well, they would be rather tedious to go through.

Q. But should they not be shown on the balance sheet?

A. No.

Q. Well, I am instructed that that is where they would appear?

A. I do not know—this stock was not taken by me.

Q. I understand that, but I mean, when a statement is prepared showing the assets under heads there, I want to know as a matter of business, and as a matter of books, where the details comprised in each of these entries would be found?

A. We have books for these, proper books for every item.

Q. I am instructed now that these details should appear in these balance sheets that you say were made out from time to time?

A. I never said such a thing.

Q. Well, now, coming back to this statement C and the assets of the firm.

This overdraft of twenty-nine thousand and seventy-nine dollars and thirty-one cents ($29,079.31), was not included in what is entered as book debts?

A. You have every particular there.

Q. But was this overdraft of twenty-nine thousand and seventy-nine dollars and thirty-one cents ($29,079.31), included in the book debts or assets of the firm?

A. It is all shown up there.

Q. Well, what I am asking you is whether it is put down as an asset of the firm, in the statement in which you stood with your creditors?

A. There was no asset as regards that. Everything was simply wiped out, bodily and entirely.

Q. But in making the offer for your estate, and in making the statement for your curator, you represented according to the statement C certain things which were in stock, certain book debts, certain bills receivable, certain plant, certain amount of money in the bank of Scotland, and a certain amount of cash on hand?

A. Yes, all these things were explained.

Q. But you had not, either to your assignee or to the creditors in Europe, given in this item that we have been talking of, the overdraft as an asset?

A. Certainly not.

Q. The Mr. Riddell that you have spoken of is the accountant?

A. Yes, he was the accountant.

Q. And the liquidator of your firm?

A. Yes.

Q. And he went into this account, Exhibit C?

A. Yes, he went into everything. He sent me copies of those to England, and everything else.

Q. Well, you were here at the time of the suspension of your firm, were you not?

A. No, I was in England.

Q. When did you get back?

A. I got back about two weeks after the suspension.

Q. So you were here about three weeks before the abandonment of the estate?

A. Yes, about that. They had settled to liquidate the business when I had come back.

Q. Well, now, I see that book debts are represented in that statement C as amounting to about forty-nine thousand dollars,—book debts are represented in statement C, and are shown as assets to the extent of about forty-nine thousand dollars?

A. Yes.

Q. Well, what book debts were these?

A. Those are the book debts of the customers.

Q. That is, of the different customers of your firm that owed the firm?

A. Yes, open accounts.

Q. Was this statement C exhibited to your creditors or one substantially the same?

RECORD.

In the Superior Court.

No. 4. Deposition of John MacLean produced by Plaintiff on 5th Dec., 1892— *continued.*

A. One substantially the same. I could not say if it was exactly the same just at this moment.

Q. But it was a statement on the basis of the surplus of fifteen thousand dollars?

A. Yes.

Q. And I understand that you made an offer of fifty cents on the dollar for the estate?

A. Yes.

Q. Paying, however, certain of the claims like rent, and the assignee's expenses in full?

A. Yes, those were privileged.

Q. Then your fifty cents on the dollar would have been paid upon the amount of bills payable and open accounts due by the partnership to the different people?

A. Yes, fifty cents on this side, and ten shillings on the pound on the other side, that is, in Europe.

Q. I see, that according to the offer you made, it was to pay all privileged and secured claims and expenses in insolvency in full in cash, and the composition of the ordinary liabilities at the rate of fifty cents on the dollar to the Canadian and American creditors, and ten shillings on the pound to the European creditors, the latter payments by notes?

A. Yes.

Q. As a matter of fact, the creditors to whom you did pay this composition of fifty cents on the dollar or ten shillings on the pound, were to those holding bills payable by the firm and open accounts?

A. Yes.

It is admitted that the Plaintiff's Exhibit 6 is a true copy of the abandonment made by the firm of John MacLean & Co.

Q. As the result of this payment to the creditors you have got back the business and have been carrying it on yourself?

A. Yes.

CROSS EXAMINED.

Q. You got back the business,—you got back the assets in the hands of the curator?

A. Yes.

Q. Your offer to the curator and creditors stipulated for that, if I do not mistake?

A. Yes.

Q. Who had charge of the books in connection with the firm during the time you were in partnership with Mr. Stewart?

A. Mr. Stewart had charge of the books entirely, with the assistance of Mr. Dodds.

Q. Then the books of which you have spoken, and which you have had communication of in your examination in chief are made up by Mr. Stewart,—are in his handwriting.

A. Entirely in Mr. Stewart's handwriting.

Q. Especially the private ledgers?

A. Yes, they were kept by Mr. Stewart especially.

Q. And the method of making charges to the personal accounts of the partners, is that pursued by Mr. Stewart?

A. Yes.

Q. Were you advised with or consulted with in any way by Mr. Stewart, as to how these entries should be made?

A. No, I was not advised with or consulted with in any way by Mr. Stewart.

Q. At no time?

A. No.

Q. And the only time you signed any statement in connection with the business was in the year one thousand eight hundred and eighty-nine (1889)?

A. Yes, as far as my recollection brings me back.

Q. Well, now, what did you take communication of, when you signed that statement for the year one thousand eight hundred and eighty-nine (1889). Was it just the pages of the book shown to you?

A. It was just simply the book which was brought in.

Q. Just this book which was shown to you and the copy of the statement of items which are contained in the Exhibit filed by the Plaintiff as Exhibit A at enquete—that was all you saw?

A. All I signed was the book, yes.

Q. What did you do with regard to that statement? It was only the page of the book you examined?

A. Yes. I happened to be in the warehouse at the time and I was called into the back office, Mr. Stewart saying that it was in our deed of co-partnership to make out our sheets as we might be called on, and he wanted me to sign it at once, as he wanted to give it to Sir Donald A. Smith. Mr. Smith was not in the place at the moment.

Q. (By the Court) So you signed without any verification of the statement?

A. Yes.

Q. (By Counsel for Defendant.) Were any of these statements or details of the statements shown to you?

A. No, not at all.

Q. You were asked with regard to the nominal surplus of fifteen thousand three hundred and sixty-nine dollars and fifty-eight cents ($15,369.58), which appears on the statement Plaintiff's Exhibit C, if that appeared to be made up by the addition of the amount standing to the credit of Messrs. Stewart & Smith and the deduction of your own overdraft or rather from the deduction of the amount standing to your debit. Do you know whether that surplus was arrived at in that manner?

A. I do not.

Q. What is the ordinary way of arriving at a nominal surplus or a deficiency in an estate?

A. I am not a practical book-keeper.

Q. Would you not consider it was simply by taking the assets and deducting the liabilities from them?

RECORD.

In the Superior Court.

No. 4. Deposition of John MacLean, produced by Plaintiff on 5th Dec., 1892— *continued.*

A. I suppose so. I am not sufficiently up in these matters.

Q. I think you said in your examination-in-chief that the amount of the surplus appeared to be fifteen thousand four hundred and eighty-five dollars and ninety-five cents ($15,485.95.) Do I understand you to say that the amount of a nominal surplus of fifteen thousand three hundred and sixty-nine dollars and fifty-eight cents ($15,369.58), is incorrect—the two amounts do not come out the same. The surplus shown on this statement is fifteen thousand three hundred and sixty-nine dollars and fifty-eight cents ($15,369.58 :) now the addition of the two amounts to the credit of Messrs. Stewart & Smith and the deduction of the amount charged you, leaves fifteen thousand four hundred and eighty-five dollars and ninety-five cents ($15,485.95). I understand you say that the two should be the same ?

A. They should be.

Q. You think they should ?

A. I do not know.

Q. Now all your knowledge of the affairs of the partnership is drawn from the books that were kept by Mr. Stewart ?

A. Yes, all my knowledge of the affairs of the partnership is drawn from the books that were kept by Mr. Stewart.

Q. Were all these books from which you have spoken to-day, in the hands of the curator of the estate, Mr. Riddell ?

A. Yes, they were all there.

Q. Including the private ledgers ?

A. Yes; everything was there. If they were not, they ought to have been, as Mr. Stewart had the handling of them all.

Q. They never passed into your possession before going into the possession of the curator ?

A. No, he had possession before I arrived in this country.

Q. And he had communication of the partners' private accounts as well as of the others ?

A. Yes.

Q. Did you give any communication to Mr. Stewart at all of your offer to the creditors before doing so ?

A. Yes.

Q. In what way ?

A. I cabled the firm from London, saying that I was making the offer, or some words like that, and to cable me if you (Stewart) were making the offer.

Q. Do you know if that cable was received ?

A. I have a copy of it ?

Q. Did you receive an answer to it ?

A. No, I received no answer to it.

Q. You were in England, as I understand, at the time you made this offer ?

A. Yes.

Q. Now you were asked as to Mr. Stewart and Mr. Smith having amounts on the credit of the books of your old firm. At what period were these amounts paid in by Mr. Stewart and Mr. Smith ?

A. Four and a half years before the suspension.

Q. But how long before the formation of the new firm ?

A. About two months before the formation of the new firm.

Q. Then these amounts were only put in after it was agreed to form the partnership ?

A. Yes.

Q. The deposits were made in anticipation of the partnership which was subsequently entered into ?

A. Yes.

I produce as Defendant's Exhibit A 1 at enquete, a copy of the cablegram sent by me to the registered cable address of my firm in Montreal.

Q. I think you stated that you got no reply to that cablegram ?

A. No, I got no reply to that cablegram.

Q. You said, I think, that one of the keys might have been given to you of the new private ledger. Did you ever have keys of the other private ledgers ?

A. I got one. Mr. Stewart said this morning that he gave me a key to the first one, but the second one he may have given me a key.

Q. Did you ask for that key,—did you get the key from Mr. Stewart ?

A. No. Mr. Stewart is in possession of the keys now. We had to break the private ledgers open, and the post-office box, as far as I know.

RE-EXAMINED.

Q. Well, now, you said this morning that if Mr. Stewart gave you a key, it was so ?

A. Yes. one of them.

Q. Well, now, the other private ledger you say is an old private ledger ?

A. Yes, it is an old private ledger.

Q. Well, now, is not that the one you had for the business of the firm before he (Stewart) went in there at all ?

A. Yes. I remember the peculiarity of the key.

Q. Did you ever complain to Mr. Stewart that you did not get access to the papers or books of the firm ?

A. No, I do not think I ever did so.

Q. And is it not perfectly true that if you wished to verify what is in these statements and books before you, you could have done it ?

A. I could have done it, perhaps, with a little bit of disagreeable work. My business was entirely on the outside, and Mr. Stewart's inside, and we were supposed not to conflict one the with other.

Q. Where did you send this cable from ?

A. I sent it from London.

Q. Which station ?

A. From the office itself.

Q. On Trafalgar Square ?

A. Yes. on the corner of Trafalgar Square, either that or.....

Q. Well, no matter. What time of the day did you send it or what time of the night ?

RECORD.

In the Superior Court.

No. 4 Deposition of John MacLean, produced by Plaintiff on 5th Dec., 1892— *continued.*

A. I could not say. Of course, I cannot say now.

Q. I see that the cable says that you were going to offer on your own account?

A. Yes.

Q. Before you left here, was not all the discussion in the line of making the offer on behalf of the firm?

A. No, it was not. The only thing I wanted to know was, that there were some statements going to Europe detrimental to my drawings, which I made out in England (that is, some of my friends) that I had drawn out three thousand five hundred pounds (£3,500), and this was simply bad debts written off; now, you put my drawings down at something like five hundred pounds, which was all I drew; these statements were read out publicly in Europe.

Q. What I was asking you was whether before you went to Europe you did not discuss with Mr. Stewart the offer with the old partners?

A. No. The only offer we ever made was to the Merchants Bank, and Mr. Stewart was anxious to get the estate and something out of it.

I said, "Mr. Stewart, if the estate is ever got, we must make something between you and me." All I wanted when going to Europe, was simply to face my creditors, and I said over and over again, I would not handle one cent of the firm of John MacLean & Company, unless I could carry on the business myself.

Q. I asked you whether before you went to Europe, you did discuss with Mr. Stewart of making an offer to the creditors in England on behalf of the old partnership?

A. We may have talked over the matter, but there was nothing talked about going into business or getting the stock. There may have been a few things talked about, but not very likely. One day he wanted to have a meeting of the creditors, and he said he would not cease "until he would ruin me."

Q. Where did he say that?

A. In the back office. He and I were together and he wanted to call a meeting of the creditors. There were only Mr. Meredith and Mr. Millichamp, of Toronto, creditors and unless they could call a meeting, it could not be done otherwise, for I was in possession of a document to look after the English creditors' interest—on behalf of the English creditors.

Q. And there was nobody but your two selves there when he made this extraordinary statement?

A. No.

Q. Was it long before you left for Europe that he made this statement to you?

A. The difficulty arose in this way

Q. I want to know the time it was made?

A. It was the day before he (Stewart) was ready to issue the statement, I thought by the time I would come back, that the two weeks would elapse, and I thought that the moment I arrived here the books would be balanced and all ready, but it was not until two weeks after that.

Q. Was it during that period that the books were being balanced that he made that statement?

A. It was immediately after they were balanced.

Q. Was that before you had the meeting of your creditors?

A. Yes. We never had a meeting here.

Q. But he wanted to stop the business?

A. He wanted a meeting here. He told me when I arrived from England, after leaving me a day here,—I came into the office about half-past ten,—he left the office about half-past eleven, and he never turned up until the next day at eleven o'clock, and I had a few minutes conversation with him then, and he said he had made arrangements to liquidate the business, so to save discussion I said, "Well, I must be consulted in the matter. I have a document in my pocket (taking it out), showing nearly every creditor in Europe, representing something like twenty-four thousand pounds, saying that they gave me full charge to do the best possible for them."

Q. Well, now, you are telling us about things that happened some time before the period I am asking about. When did you leave this country to go to England, with a view of making an offer?

A. Our abandonment was on the twenty-second of July, and it was very soon after that I should say. I should say it was within three, four or five days or a week perhaps, or it might have been more, but I could not judge the exact number of days. It was certainly not more than a week.

Q. Between that?

A. Between the abandonment and the time I left.

Q. You left about a week after the abandonment?

A. Yes, I left about a week after the abandonment.

Q. Well, now, notwithstanding the friction between you and Mr. Stewart, you all three determined to make an abandonment and did so?

A. Yes.

Q. You left about a week after the abandonment for England?

A. Yes, I left about a week after.

Q. Did you ask Mr. Stewart to prepare a statement upon which an offer could be based to the English creditors?

A. This was all made up before.

Q. Did you ask him to make it?

A. This had been made up. I did not ask him. Mr. Stewart said there were only some forty cents on the dollar.

Q. I am asking you if you asked him to prepare a statement. He tells me you asked him?

A. I never asked him. The statement was prepared.

Q. For what purpose was it prepared?

A. His idea was to tender for the stock and wind it up.

Q. Was not your idea that there should be an offer made upon that statement that was prepared,—an offer to the creditors?

A. No, I could make no offer. I had no offer in my hands, when I left here.

Q. Was not your idea, when you got that statement, to make an offer to the English and Canadian creditors for the estate? I am asking for your own idea now, not what you told Mr. Stewart?

RECORD.

In the Superior Court.

No. 4. Deposition of John MacLean, produced by Plaintiff on 5th Dec., 1892—*continued.*

A. Not when I left here. I had no idea whether I could make an offer or not.

Q. But you intended, if you could, to make one?

A. Well, naturally if I could carry on a business, I would do something.

Q. Now, I ask you if there was not a conversation between you and Stewart before you left here for England upon the lines of your making an offer, on behalf of yourself and the old partners for the estates?

A. No.

Q. Do you swear to that?

A. Yes, I swear to that. I knew I could not get the estate.

Q. You think you could not have got the estate with Sir Donald A. Smith's son then, and Mr. Stewart, but you could get it for yourself?

A. Yes, with security; but I knew I could not do it with Mr. Stewart.

Q. When you made this offer to the English creditors, you say you could not have got the estate without security. Did you tell them who your security was?

A. Yes, after I was in possession.

Q. Well, you say in this cablegram to your partners, which is dated the tenth day of August, one thousand eight hundred and ninety-one (1891), you say that you are going to make an offer on your own account to the estate the next day?

A. Yes.

Q. Did you have your security arranged then?

A. I was promised it.

Q. Had you the promise of it before you left this country?

A. No, I had not the promise of it before I left this country.

Q. It was only after you got over there that it followed?

A. Yes, after I got over there that it followed.

Q. What was this statement now, you said Mr. Stewart made to you in the back room of the store, when you were both alone there?

A. About that he would ruin me?

Q. I want to know what the statement was?

A. Well, he got very excited, and said he would write every creditor in Europe about this overdraft and one thing and other; but, of course, there was nothing,—I never applied to him.

Q. That is what he said?

A. Yes, that is what he said.

Q. He told you he would write to the creditors in Europe about the overdraft?

A. Yes.

Q. He was complaining to you about overdrawing your capital account?

A. He was complaining that I should have paid that.

Q. He wanted that handed back?

A. Yes, he wanted me to hand that back.

Q. That is what he said?

A. Oh, I cannot tell you the nature of the conversation at the time, for he was excited, and perhaps we may have both been excited.

Q. You may have said something strong too?

A. No.

Q. He was greatly annoyed about the overdraft?

A. Well, different things. He could not get the meeting of the creditors to his liking, and he wanted this liquidation to go on,—simply a liquidation of two years. I asked him how long it would take, and he said two years to liquidate.

Q. And just locate the time of that conversation, as near as you can?

A. That might have been a week before I went away.

Q. Well, it was just about the time of the abandonment?

A. Yes.

Q. A little before the abandonment?

A. Yes, either before or after,—it must have been before.

Q. Well, now, do you think that these men getting the cable the day before the creditors were to meet, and without any notice of where the meeting was to be or anything about it, were in position to meet here?

A. Well it must have been at least ten days before anything could have been done on the other side, and my waiting for a day or two was on account of Sir Donald A. Smith,—I sent this cable the day before I saw Sir Donald A. Smith. I went up to Sir Donald A. Smith, and told him what I had done, and said, if there was anything I had done, that you would like undone, I am prepared to do it. Sir Donald's words were, "I would not like to advise you. You are doing what I think is right, and I hope you will get the estate and do well with it."

Q. That is not what I asked you. I asked you did you think that this cable was any sort of notice to your partners? If it would give them, as business men, the opportunity of making an offer in London the next day at noon?

A. It was here that the matter had to be decided.

Q. I thought you were making an offer to the creditors in London?

A. I had to make one in London, but it had to come here.

Q. Well, could any one make an offer to come into competition with yours?

A. Nothing could be done here.....

Q. Could they have made an offer, or any one that lived in London, in competition with yours?

A. I do not know as they could. Mr. Stewart was asked whether he would offer or not by Mr. Millichamp of Toronto, the man in charge, and he said "no, he was not going to make an offer."

THE DEFENDANT OBJECTS TO ALL HEARSAY EVIDENCE.

Q. What I asked you was whether this cablegram to them gave them any sort of opportunity to make an offer to the people that you were making an offer to?

A. Well, they had an assignee here, and Mr. Millichamp who was the entire representative of the English creditors here.

Q. Do you not ask them here (in the cablegram) whether they will offer or not?

RECORD.

In the Superior Court.

No. 4. Deposition of John MacLean, produced by Plaintiff on 5th Dec., 1892—*continued.*

A. Yes.

Q. Now, I am instructed that this cable never arrived here until the morning of this meeting, and that it was five hours time against your two old partners,—that there was not much chance to make an offer by noon?

A. I do not know anything about that.

Q. You know that they were pretty well barred on the matter of time?

A. Yes. Well, there was plenty of opportunity after anyhow.

Q. Who were to meet the next day at noon?

A. They had told off some five men to meet me. They were creditors.

Q. Where were they to meet you?

A. They were to meet me in London.

Q. Who had told these off?

A. The English creditors insisted on calling a general meeting. They said "Mr. MacLean, is arriving and you had better see him," and they called a general meeting. Nothing could be done until after this. I was to meet these men.

Q. You did not indicate the place where you were to meet them?

A. No.

Q. Who arranged for that meeting?

A. Mr. Riddell is in possession of all the addresses and everything.

Q. He knows the addresses of these mens' places of business, but he did not know where the meeting was?

A. Yes he did. He knew where in London.

Q. How did you know that?

A. By cable.

Q. You told him that?

A. Mr. Millichamp told him.

Q. Who sent the cable to Mr. Millichamp?

A. The lawyers there.

Q. Did you know what was in the cable?

A. No, I did not know what was in the cable.

Q. Who arranged about that meeting in London?

A. I got the second one.

Q. Well, this noon meeting, who arranged to get that meeting?

A. My people on the other side.

Q. Your agents?

A. Yes, my agents on the other side.

Q. And you attended to it?

A. Yes.

RE-CROSS-EXAMINED.

Q. This cablegram refers to the inspectors' meeting at noon?

A. Yes.

Q. It would take some time to get this offer through?

A. The offer first had to be made in England, and had to be sent to Germany, France and this country, which naturally would take at least a week.

Q. You did not condition your offer upon its being accepted instanter?

A. No, it could not be done. They were not in a position to do it.
Q. Whom do you mean by they ?
A. The people that were told off to meet me.
Q. The inspectors and representatives of the English creditors ?
A. Yes.
Q. And the creditors were scattered all over in Germany, England, France and elsewhere ?
A. Yes.
Q. When was this offer of yours accepted ? The offer that you finally made, when was it accepted ?
A. Not until about the end of September.
Q. The offer which you refer to in your cable of the tenth of August ?
A. Yes.
Q. So, that until that time, it was open for them to take it or not ?
A. Yes, six weeks.
Q. Was it known to the curator here ?
A. Everything was known to the curator and also to anyone that wanted to go to Mr. Riddell's office,—the partners and any others.
Q. Were the terms of your offer communicated to the curator ?
A. Yes, the terms of my offer were communicated to the curator.
Q. And did Mr. Stewart know of it within your knowledge ?
A. I have no doubt he did.
Q. Well, the curator had possession of the terms of the offer ?
A. Yes.
Q. Who was it guaranteed the last payment ? You say "guarantee last payment" in your cable. Who was it guaranteed that ?
A. Mr. Andrew F. Gault.
Q. You stated, I think, in your re-examination, that you could not get this security for the offer made for the partnership. What do you mean by that ?
A. Well, I knew I could not get my estate with those that were with me.
Q. That is that Mr. Gault would not gaurantee ?
A. I never asked Mr. Gault, but there was a feeling that that should pay one hundred cents on the dollar, and my aim was to get their discharge.
Q. Your aim was to get the discharge ?
A. Yes.
Q. And you stipulated for the discharge for your partners as well as yourself ?
A. Yes.
Q. And what was it induced Mr. Gault to guarantee the last payment ?
A. Nothing but friendship.
Q. For yourself personally ?
A. Yes, for myself personally.

RE-RE-EXAMINED.

Q. You were all equally liable for these debts, Mr. MacLean ?
A. Which debts ?

RECORD.

In the Superior Court.

No. 4. Deposition of John MacLean produced by Plaintiff on 5th Dec., 1892—*continued.*

Q. The debts you paid with the notes,—the liabilities of the business?

A. Yes, we were all equally liable.

Q. Well, I suppose that you are aware that in getting the discharge of these liabilities, in its legal, it would discharge your partners?

A. That is the difficulty I had to contend with. If it had been myself, I would have had that estate very much sooner.

Q, (Counsel for the Defendant.)—You said something about the rumors you heard on the other side about statements of large drawings on your part. I want to know whether there had been any statement made to your knowledge to the creditors about your drawings? 10

(The Plaintiff objects to this as hearsay.)

(Objection withdrawn.)

Q. Do you know whether any statements had been made to the creditors in England, as to the alleged overdraft on your part, or drawings on the business?

A. This had been given to representatives here, if I think,—by some one in the office, whom I do not know, but it was read at the meeting, that those overdrafts and everything, were my excessive drawings out of the firm, instead of bad debts.

Q. That the losses in your business were due to your excessive drawings? 20

A. Yes, that statement was made at the first meeting of creditors in England.

Q. Were you present then?

A. No, I was not present then.

Q. Who made the statement? In what shape did it come?

A. It was made in the shape of a letter.

Q. From whom was that letter?

A. From Mr. Millichamp. It came through persons—I asked them twice to read the letter, but they would not do it to me, and they apologized at the general meeting of creditors. 30

Q. The statement made was that the losses had been caused by your having personal drawings?

A. That was one of the statements.

Q. And was there not any amount mentioned?

A. Yes, the amounts were mentioned. As I say, there was one something like in the neighborhood of three thousand some odd pounds, within about six months, but those were bad debts that were written off—about fourteen thousand dollars bad debts.

Q. Which had been represented to be your personal drawings?

A. Yes, which had been represented to be my personal drawings. 40

Q. By Counsel for Plaintiff. About this overdraft and what was sent over to England. Did not the Curator himself send over a statement showing how each of the accounts of the partners stood? and your overdraft?

A. Yes.

Q. And you met that over there?

A. Yes, it was sent to me. I cabled for it.

Q. The liquidator sent it?

A. Yes.

Q. To whom did he send it?

A. To me. I had to show this to the people.

Q. Did the liquidator send that to any of the creditors independently?

A. It was given entirely to the creditors.

Q. From the liquidator?

A. Yes, from the liquidator.

Q. Did Mr. Riddell, himself, send from his own office a statement of this overdraft to the creditors in England?

A. I am not aware of that.

Q. In this statement that Mr. Riddell sent over, was this the statement that we are proving here to-day?

A. Yes.

Q. They asked you about this overdraft?

A. They asked me about it.

Q. That it was a very large amount to draw three thousand five hundred pounds in six months?

A. Yes.

Q. By Counsel for Defendant. And then you cabled to Mr. Riddell for the correct statement?

A. Yes, I cabled to Mr. Riddell for the correct statement.

Q. By Counsel for Plaintiff. The statement sent by Mr. Riddell was the statement we are proving here to-day?

A. Yes.

And it now being four of the clock, the further examination of this witness is adjourned until the next day, Tuesday, December the sixth (6th), at half-past ten in the morning.

And on the sixth day of December, one thousand eight hundred and ninety-two, re-appears the said witness John MacLean, and his examination is continued by Mr. Macmaster, on behalf the Plaintiff as follows:—

EXAMINED BY PLAINTIFF'S COUNSEL.

Q. Mr. MacLean, I want to ask you how long have you been in business?

A. About twenty-four years,—twenty-three or twenty-four years.

Q. And how long have you been carrying on business under the name of John MacLean & Company?

A. About eighteen years.

Q. Now, you are a well-trained business man?

A. An outside man, not an inside man.

Q. Well, are you not thoroughly familiar with financial affairs relating to the business?

A. No, I am not.

Q. You are not?

A. No, I am unfortunately not as well as I should be.

Q. You had partners before this?

A. Yes.

Q. I suppose you took an interest in the business?

RECORD.

In the Superior Court.

No. 4. Deposition of John MacLean produced by Plaintiff on 5th Dec., 1892— *continued.*

A. Yes, but I left the office work entirely in the hands of my partners.

Q. In taking an interest in the business, did not you ever inquire how matters stood?

A. Yes.

Q. And you were told?

A. Yes, I was told.

Q. It is a customary thing to have a lock and key on the private ledger in business houses, is it not?

A. That I am not sure. It has been our custom?

Q. The same rule was followed as to your firm before Mr. Stewart went in?

A. Yes.

The Statement Plaintiff's Exhibit D is an analysis of my Capital Account as entered in the private ledger.

And further deponent saith not.

A. A. URQUHART.

No. 5. Deposition of Alexand'r F. Riddell, produced by Defendant on 6th December, 1892—

On the sixth day of December, in the year of our Lord one thousand eight hundred and ninety-two, personally came and appeared Alexander F. Riddell, of the City of Montreal, accountant, aged thirty-nine years, and witness produced on the part of the Defendant who, being duly sworn, deposeth and saith: I am not related, allied, or of kin to, or in the employ of any of the parties in this cause, I am not interested in the event of this suit:—

Q. You were the curator appointed to the estate of the firm of John MacLean & Company?

A. Yes, I was.

Q. How long did you occupy that position?

A. From the time of the abandonment until Mr. MacLean effected a settlement of the liabilities and received a transfer of his estate.

Q. And the estate was handed back to him?

A. Yes, the estate was handed back to him.

Q. Have you the books of the estate with you?

A. Yes, I have the record.

Q. Will you produce the record?

A. Yes.

Q. Can you say when the offer was first made—the offer made by Mr. MacLean was first submitted to the creditors?

A. I cannot give the exact date of that, as the meetings were held in England, and the creditors were all in England, with the exception of two in Montreal and three in New York.

Q. The rest of the creditors were on the other side of the water?

A. Yes, the rest of the creditors were on the other side of the water.

Q. And the meetings were held in London, England?

A. Yes.

Q. Were you kept posted or advised as to what was being done in England?

A. From time to time I received notice from the other side of what was being done and meetings held,

Q. And you were aware that an offer was submitted by Mr. MacLean to his creditors of how much ?

A. The offer was ten shillings on the pound.

Q. The offer was ten shillings on the pound to the English creditors ?

A. Yes, and fifty cents to the Canadian creditors.

Q. Can you say about what time that offer was first known to be made ?

A. Mr. MacLean went over very shortly after the abandonment, to the best of my recollection, and the offer was put in in train at once ?

Q. So it was some time early in August ?

A. It was before then.

Q. Well, the abandonment was on the twenty-second of July, so it was some time about the middle of August ?

A. Yes, about the beginning of August.

Q. Do you know if that proposition of Mr. MacLean's was known to Mr. Stewart, the Plantiff in this case q

A. Yes, I am satisfied it was.

Q. And you are satisfied it was known to Mr. Stewart ?

A. Yes, I am satisfied it was known to Mr. Stewart.

Q. Mr. Stewart was in your office from time to time while you were in the position of curator ?

A. He came in once or twice into our office.

Q. But you have no doubt he knew of this intention of Mr. MacLean to make the offer ?

A. To the best of my recollection I think Mr. Stewart and I had a conversation about it in the firm's presence.

Q. And was any offer made by Mr. Stewart ?

A. No, no offer was made by Mr. Stewart.

Q. None at all ?

A. No. none at all.

Q. How long was this offer in train, or before it was finally accepted, do you recollect ?

A. It was some time—some considerable time.

Q. Well, have you the letter,—you can say more definitely, perhaps, if you have the letter which Mr. MacLean finally put in. I think you must have a copy of the original letter ?

A. The letter is dated the third of October, one thousand eight hundred and ninety-one (1891), and signed by John MacLean. I may say to the best of my recollection the original of this letter was fyled in Court along with the minutes authorizing the curator to accept the offer and transfer the estate to Mr. MacLean.

Q. Along with the petition for authorization to accept it ?

A. Yes.

Q. Would you look at Plaintiff's Exhibit number eight and say if that is a correct copy of the offer made by Mr. MacLean ?

Y. Yes, this appears to be a correct copy.

RECORD.

In the Superior Court.

No. 5. Deposition of Alexand'r F. Riddell, produced by Defendant on 6th December, 1892— *continued.*

Q. Now, I see by the terms of that letter or offer that you were to transfer everything to Mr. MacLean. Were you to transfer to him the amount collected since the abandonment as well, or to account for it?

A. Well, the cash account was made up and the settlement was made with him for collection.

Q. So you accounted to him for everything from the date of the abandonment to the date of the transfer?

A. Yes, I accounted to him for everything from the date of the abandonment to the date of the transfer.

Q. What were the total liabilities of the firm of John MacLean & Company?

A. The total direct liabilities, ordinarily and privileged, were one hundred and sixty-five thousand two hundred and thirty-three dollars and forty-five cents ($165,233.45).

Q. That was direct liabilities?

A. Yes, ordinary direct liabilities.

Q. And that included privileged claims.

A. Yes, that included privileged claims.

Q. How much were the privileged claims?

A. The privileged claims were two thousand eight hundred and thirty dollars and forty-seven cents ($2,830.47). In addition to these figures there is an indirect liability of paper under discount to the Merchants Bank of Canada amounting to one hundred and fifteen thousand nine hundred and eighty-nine dollars ($215,989), and rent of Montreal warehouse to the first May, one thousand eight hundred and ninety-two (1892),—that was from the thirtieth of June, one thousand eight hundred and ninety-one (1891), to the first of May, one thousand eight hundred and ninety-two (1891), not included in the previous statement of three thousand seven hundred and fifty dollars ($3,750).

Q. Do you know whether any of that indirect liability to the Merchants Bank of Canada became a direct liability, subject to the terms of Mr. MacLean's offer?

A. They claimed on the estate for sixteen thousand dollars ($16,000).

Q. And then Mr. MacLean paid them a dividend of sixteen thousand dollars ($16,000).

A. Yes. I think that sixteen thousand dollars may have been a direct claim.

Q. If it was a direct claim would it be included in your first figures of direct liabilities?

A. Certainly.

Q. Then there is no part of the one hundred and fifteen thousand dollars ($115,000) that you have mentioned of the indirect liability that became a direct liability?

A. I cannot tell, as Mr. MacLean made arrangements to take up that paper.

Q. As far as you know there was none?

A. Nothing appeared on the dividend sheet.

Q. Then while this estate was in your hands, from August to October,

when Mr. MacLean's offer was made there was no other offer before you except Mr. MacLean's offer of fifty cents on the dollar ?

A. No.

Q. No other offer ?

A. No, no other offer.

Q. This was a well known business firm—the firm of John MacLean & Company was a well known business firm ?

A. Yes, it is a well known business firm.

Q. What was the nature of their business ?

A. Wholesale millinery and fancy goods.

Q. Now in your statement what was the stock taken in at—the stock in trade as asets ?

A. One hundred and twenty thousand and sixty-three dollars and seventy-five cents ($120,063.75).

Q. What did that stock consist of ? Hats, bonnets and things of that sort ?

A. Well, I cannot personally say.

Q. It was a general milliney stock was it not ?

A. Yes, it was a general millinery stock.

Q. What class of stock would you call it ? Was it a staple stock or what ?

(The Plaintiff objects to his question as illegal and irrevelant to the case.)

(The Court reserves the objection.)

A. Well, the valuation was made by an outsider on this stock.

Q- I mean, what was the character of these goods. There are such things as staple goods and others not so, would you call this stock a staple stock ?

A. A stock of that kind, according to my judgment, is not as easily realized upon as a staple stock. It is subject to greater depreciation in a forced sale.

Q. If this stock had been brought to a forced sale it would not have realized anything like what was taken in the inventory ?

A. I thould not think so.

Q. By how much, would you think ?

A. I could not tell.

Q. Now, there has been a statement put in here as Plaintiff's Exhibit "C" at enquete, showing a nominal surplus on this estate of fifteen thousand three hundred and sixty-nine dollars ($15,369), which is arrived at by taking the stock in at one hundred and twenty thousand dollars ($120,000). How much were the assets on this estate really worth ? Did that surplus really exist or not ?

A. Well, I should think not, or the creditors would not have accepted fifty cents on the dollar.

Q. Did you put any valuation upon the stock ?

A. The valuation was made, not by me, but under the direction of the inspectors.

Q. What was that valuation ?

(The Plaintiff objects to this unless the figures are put in by the proper witness).

Q. Have you got the report ?

RECORD.

In the Superior Court.

No. 5. Deposition of Alexand'r F. Riddell, produced by Defendant on 6th December, 1892— *continued.*

A. I have not got it among my papers. It may have been sent across to England.

Q. Have you not got it here?

A. No, I have not got it here?

Q. Who made it?

A. J. H. Carnegie, with James Johnson & Company.

Q. Have you got no report here at all? No figures given by him?

A. I have not got it here. I can produce a copy of it.

Q. Will you produce a copy of that report?

A. I will endeavour to do so.

Q. How soon can you get that?

A. I will do the best I can.

Q. Can you have it here as two o'clock this afternoon?

A. I am under the impression that it was sent over to England, but I can get the contents I think.

Q. Was there anybody else engaged in the valuation of that stock besides Mr. Carnegie?

A. No, there was nobody else engaged in the valuation of that stock.

Q. He (Carnegie) was the only one?

A. Yes he was the only one.

Q. Do you think that Mr. Millichamp might have a copy of that report?

A. He might.

Q. You do not remember to whom you sent it?

A. No. I had a good deal of correspondence about it.

Q. Do you think you could trace up what you did with that report?

A. Yes, I am satisfied I could do that in my office.

Q. Was there any valuation put on the book debts which appear in this statement at forty-nine thousand five hundred and thirty-six dollars ($49,536)?

A. Not to my recollection.

Q. Was there no classification made of them, good bad or doubtful, or anything of that sort?

A. I do not think so.

Q. Can you state how many of them were good or bad?

A. I may say that while the examination of the books was made under my direction, my partner, Mr. Common, did it personally himself.

Q. Did he make any classification of the book debts?

A. My recollection is that they were considered fairly good.

Q. "Fairly good." What do you mean by that? Fifty cents on the dollar?

A. I will have to go over my memorandum again to get at the particulars about the debts.

Q. Have you got your memorandum here with you?

A. I have got a general statement.

Q. I wish you would go through it and find out if you can?

A. I have a list here.

Q, Is that a list of the book debts?

A. Yes, this is the list of the book debts.

Q. There is no classification here of these things?

A. No, there is no classifiation there.

Q. Would Mr. Common have a classification of these book debts at all?

A. He would have it, if one was made. I would know about it. I know some of these debts were considered bad at the time.

Q. What proportion of them could you say was considered bad at the time?

A. There is a great mass of them. I cannot tell you.

Q. The book debts, as they are there, are they principally in small or large amounts?

A. Principally in small amounts, but there was one Nova Scotia debt that an arrangment had to be made about of a considerable sum.

Q. It was paid?

A. Well, some allowance had to be made. It was either in here, or the list of bills receivable, or discount; it is not here. There may be a proportion but not to any great extent.

Q. The book debts were of a large number, I understand, and considerably spread, and of small amounts?

A. Yes.

Q. What did the plant that is in this statement consist of?

A. Furniture and fixtures, fifteen hundred dollars.

Q. Furniture and fixtures in the store?

A. Yes.

Q. Those were used just for the store?

A. Yes, they were used just for the store.

Q. And the bills receivable, of one thousand eight hundred and sixty-five dollars ($1,865), were they good or bad, or what were they like?

A. As far as I know they were good enough.

Q. What do you mean by "good enough?"

A. There was none of them past due. They were coming due after the date of the abandonment.

Q. Do you know how they were afterwards met?

A. No, I do not.

Q. Mostly in small amounts, I see?

A. Yes, mostly in small amounts.

Q. Do you know what valuation was put upon the stock of this estate by Mr. Carnegie?

A. I cannot recollect it just now.

Q. Have you got anything that will help you?

A. No, I have not got anything that will help me.

Q. Do you know about the amount?

A. I would not like to name a figure, because I am not certain. There was considerable discount off it.

By Counsel for Plaintiff:—

Q. Nothing to take the edge of that fifteen thousand dollars surplus?

A. Yes.

Counsel for Defendant Continuing.

Q. Are you sure that the discount on the stock and book debts was more

RECORD.

In the Superior Court.

No 5. Deposition of Alexand'r F. Riddell, produced by Defendant, on 6th December, 1892—*continued.*

than sufficient to wipe out this apparent surplus?

A. Yes.

Q. And you are satisfied that that estate was insolvent at the time of the abandonment?

A. Yes, I am satisfied that the estate was insolvent at the time of the abandonment.

Q. And that this surplus was purely a nominal affair and did not in reality exist?

A. Yes.

Q. You are positive about that?

A. Well, that is my opinion.

Q. Apart from your opinion, are you not sure of it?

A. Well, I could not be more positive of anything.

Q. Can you find out in any way within what period about this valuation of Mr. Carnegie was made?

A. I ought to be able to find out.

Q. Can you find out right away?

A. I can telephone to my office.

Q. (BY THE COURT)—Have you any notes in your papers?

A. No, your Honor, I have not any.

Q. (BY THE COURT)—In the letter that you wrote sending that report to England did you not mention the figures?

A. I could not say without referring to my letter book, but I did not bring it up.

Q. (BY COUNSEL FOR DEFENDANT)—Do you think you could find out by telephone the exact figures given by Mr. Carnegie?

A. I will see.

(Here the witness left the box to telephone, and on his return he answered as follows):—

(I have telphoned to my office, and as far as I can ascertain from there, this statement was given by Mr. Carnegie to Mr. Millichamp, one of the inspectors, and the impression is that Mr. Carnegie reported that the values were fairly well taken.)

Q. That is the impression?

A. Yes, that is the impression, that the values were fairly well taken.

Q. That is the impression at your office?

A. Yes, that is the impression at my office.

Q. That is not Mr. Carnegie's idea of what the stock would realize at a forced sale?

A. I cannot tell you that.

Q. You had in your possession, as curator, the private ledgers of the firm, had you not?

A. Yes, we had in our possession the private ledgers of the firm.

Q. And these private ledgers showed the state of the private accounts of the different partners?

A. Yes.

Q. And it appeared by these that there was an apparent indebtedness or

overdraft on the part of Mr. MacLean of some twenty-nine thousand dollars ($29,000), as has been shown in the statement here?

A. Yes, twenty-nine thousand dollars ($29,000).

Q. You have a statement in your hand showing that, or what is that statement?

A. These are the whole of the partner's account.

Q. Then did you prepare a statement in which you took off the statement of the accounts by the partners?

A. Yes.

Q. You did this when you were appointed a curator?

A. I did that,—Mr. Millichamp, one of the inspectors, who represented the English creditors, wished it and it was done for him.

Q. Then you showed this statement, showing the private accounts of the partners, to the inspectors?

A. Well, Mr. Millichamp, one of the inspectors, had it.

Q. And he represented the English creditors?

A. Yes, he represented practically all the English creditors?

Q. And he had communication of this statement showing the private partner's account?

A. Yes, he had communication of the statement showing the private partner's account.

Q. It was taken off for him by you?

A. Yes.

Q. And don't you think you submitted that statement or a similar statement to the other inspectors here?

A. It is very probable it was submitted to Mr. Meredith and the other inspector.

Q. So they knew what the statement of the affairs of the individual partners were,—you have no doubt about that?

A. It was a matter that was known to the inspectors, but I cannot recollect having put it exactly before them.

Q. And this was before Mr. MacLean made his offer for the estate?

A. We sent that paper (I speak from the best of my recollection) about the end of July, and in the beginning of August Mr. MacLean cabled for it.

Q. Cabled for the same statement?

A. Yes, cabled for the same statement, and it was sent over about the tenth (10) of August.

Q. So that the creditors had cognizance of the state of the partner's private account before their offer of Mr. MacLean's was accepted?

A. Certainly.

Q. Will you fyle this statement that you drew up?

A. Yes, I fyle it now as Defendant's Exhibit A 3 at enquete.

CROSS-EXAMINED.

Q. To whom were you speaking in the office over the telephone?

A. To my chief clerk, Mr. McGregor.

Q. Who had personal cognizance of this matter?

RECORD.

In the Superior Court.

No. 5. Deposition of Alexand'r F. Riddell, produced by Defendant on 6th December, 1892—*continued.*

A. Well, he (McGregor) had something to do with it. He assisted in the examination of the books.

Q. With Mr. Common, your partner?

A. Yes, with Mr. Common.

Q. When you say that the impression you got from them that the values were very well taken, do you refer to the valuation put on the stock in statement Exhibit C.

A. Yes, I refer to the valuation put on the stock in statement C.

Q. Was there a copy of this sent to the English creditors also, that is, Exhibit A 3?

A. It was sent to Mr. Millichamp, who was the attorney for the English creditors.

Q. But you did not send it directly to the English creditors?

A. No, I did not send it direct to the English creditors.

Q. I suppose Mr. Millichamp did?

A. I presume so, he was their attorney.

Q. You said you had a conversation with Mr. Stewart, about an offer in the firm's premises?

A. Yes.

Q. What offer was that?

A. Well, to the best of my recollection, it was the offer that was subsequently accepted.

Q. It was this offer of Mr. MacLean's?

A. Well, it was made by Mr. MacLean, and my recollection of the conversation is that Mr. Stewart told me that that was for Mr. MacLean himself, and that he was not interested in it. I had inferred that it was a firm matter.

Q. You expected that the offer would be put in the name of the firm.

A. Yes, I expected that an offer would be put in the name of the firm.

Q. Did that seem to be the understanding between the partners in your communication with them?

(The Defendants object to this as not arising out of an examination-in-chief).

A. No, it was not the understanding on either side, as far as I can make out.

Q. Did you never hear of any talk about the firm's offer?

A. No, I never did.

Q. You hear to-day?

A. This is the first time.

Q. You did not attend to the matter personally yourself?

A. Well, certainly I did.

Q. Was it not Mr. Common rather than you that attended to it?

A. I attended, except the examination of the books.

Q. These figures that are in lead pencil on the Exhibit C are Mr. Common's are they not?

A. Those are Mr. McGregor's, and some are Mr. Common's.

Q. Your chief clerk and your partner?

A. Yes, my chief clerk and partner.

No. 5. Deposition of Alexand'r F. Riddell, produced by Defendant on 6th December, 1892—*continued.*

Q. Now, about the valuation of this stock, I suppose you would not attempt to value millinery stock yourself ?

A. Certainly not.

Q. You told us, I think, that the book debts were fairly good ?

A. Yes, the book debts were fairly good.

Q. And you turned over these book debts and bills receivable to Mr. MacLean, the Defendant in this case ?

A. Yes, they were turned over to him.

Q. I suppose after that you paid no attention to the matter ?

A. No.

Q. You do not know how they turned out in his hands ?

A. No, I have no knowledge of how they turned out in his hands.

Q. Before you handed that statement that you fyled as Defendant's Exhibit A 3, to the English creditors, was every facility given to you to examine the books and to get at the correct state of the books ?

A. Yes, every facility was given to me to do so.

And further deponent saith not.

A. A. URQUHART,
Stenographer.

I, the undersigned, of the City of Montreal, sworn Stenographer in this cause, do hereby certify under the oath already taken by me that the foregoing sheets, numbered from one to seventeen consecutively, being in all seventeen pages, are and contain a true and faithful transcript in typewriting of the evidence of the above-named witness as by me taken by means of stenography, the whole in manner and form as required by law.

A. A. URQUHART,
Official Stenographer.

No. 6. Deposition of Alexand'r Stewart, produced by Defendant, on 6th Dec., 1892—

On this sixth day of December, in the year of our Lord one thousand eight hundred and ninety-two, personally came and appeared Alexander Stewart, of the City of Montreal, merchant, aged forty years, and witness produced on the part of the Defendant who, being duly sworn, deposeth and saith : I am not related, allied or of kin to, or in the employ of any of the parties in this cause, I am not interested in the event of this suit.

Q. You are the Plaintiff in this case ?

A. Yes, I am the Plaintiff.

Q. Will you look at Exhibit C, and tell me whose handwriting that is in ?

A. That is in the handwriting of Mr. Dodds.

Q. Who is Mr. Dodds ?

A. He was our bookkeeper at the time.

Q. Who made that inventory of stock ?

A. The hands in the warehouse made that inventory.

Q. They did it under your instructions ?

A. Yes, they did it under my instructions.

RECORD.

In the Superior Court.

No. 6. Deposition of Alexand'r Stewart, produced by Defendant, on 6th Dec., 1892—*continued.*

Q. What were your instructions to the hands in the warehouse in taking the price at which they should take the goods in ?

A, In the usual way.

Q. What is the usual way ?

A. Allowing discount where it was necessary.

Q. What did you take the discount off ?

A. Sometimes fifty per cent.

Q. Of what, I am asking you did you take the discount off. ?

A. Off the stock sheets.

Q. Did the stock sheets show the goods at the cost or selling price ?

A. Sometimes at the selling price—No, not always selling, usually the cost.

Q. Sometimes at the selling, you say ?

A. Sometimes at the selling.

Q. So you cannot tell how this item of one hundred and twenty thousand dollars ($120,000) is made up ? Whether it was taken in at the selling price, the cost price, or whether there was a deduction taken off ?

A, If I had the stock sheet here I could explain.

Q. I am asking you from your personal knowledge. Now, after that, the book debts were taken in at their face value ?

A. The book debts were taken in at a reduction of fourteen thousand dollars ($14,000). There were fourteen thousand dollars written off on the thirtieth (30) of June for all bad debts, and that is the result.

Q. Was that fourteen thousand dollars taken off then ?

A. Yes, and that is the result. Those were considered bad.

Q. Did you have a valuation of the estate made afterwards ?

A. I had a valuation for myself.

Q. You had a valuation for yourself ?

A. Yes.

Q. By whom did you have that valuation made ?

A. By myself.

Q. Well, have you got it with you ?

A. No, I have not got it with me.

Q. Where is it.

A. I do not think I have it. It was merely a memorandum in pencil, giving some idea of what the estate might be worth.

Q. What was the conclusion you arrived at ?

A. I really forgot the figures.

Q. Well, give it to us pretty near. You are sufficiently interested to know ?

A. Do you mean the actual amount that could be offered ?

Q. Yes, the actual amount that could be offered ?

A. I think fifty cents (50).

Q. So you consider that fifty cents—that is, fifty cents on the liabilities of the estate ?

A. Yes, fifty cents on the liabilities of the estate.

Q. Paying the privileged claims and costs ?

A. Yes, paying the privileged claims and costs.

Q. Now that was your opinion and valuation of that estate at that time ?

A. Yes, about that.

Q. So that you think that when Mr. MacLean paid fifty cents on the dollar he paid the full value for it ?

A. I think so.

Q. And you had no doubt at the time, that when you made your abandonment, that that estate was absolutely insolvent and unable to pay one hundred cents on the dollar ?

A. The moment the liquidation took place ?

Q. The moment the liquidation took place the estate at once became insolvent ?

A. I think so.

Q. You have no doubt of it ?

A. No, I have no doubt of it.

Q. Now you also know that the liquidation of that estate was brought about by your cable to Mr. MacLean when he was in England ?

A. By the advice of our bankers.

Q. No matter whom the advice was by ; will you look at the cable fyled as Exhibit A2, which cable is in the following words : " Have decided to liquidate. Advise all friends on your side and return quickly." Was that cable sent by you to Mr. MacLean ?

A. Yes, that was sent by me to Mr. MacLean.

Q. Now, what is the date of that cable ?

A. June the sixteenth (16) it appears to be.

Q. Well, that was about the date it was sent ?

A. I think that is right.

Q. Now, you said you were advised in that course by your banker, Mr. Hague ?

A. Yes.

Q. And in your own judgment thought that that was the correct course ?

A. I was advised as our credit was stopped.

Q. Your credit was stopped ?

A. Yes.

Q. Now, did you not offer 40 cents for this estate ?

A. The firm did.

Q. But the firm through you ?

A. Well, I merely wrote the letter, with the consent of the others.

Q. Well, now, you thought by the consent of Mr. MacLean and Mr. Smith ?

A. Yes.

Q. Well, at the time, you considered that that was a fair offer for the estate ?

A. Yes, because we were paying five cents more for security.

Q. So it was equivalent to paying forty-five cents ?

A. The forty cents was cash.

Q. But then it was only forty cents, because you were paying five cents to get the cash ?

RECORD.

In the Superior Court.

No. 6. Deposition of Alexand'r Stewart, produced by Defendant, on 6th Dec., 1892—*continued.*

A. Yes.

Q. So that was really forty cents?

A. Yes, but forty-five cents cash is a better offer than fifty cents at twelve months.

Q. At all events, at the time, that was all you were offering, forty cents to the creditors?

A. We were paying out of the estate forty-five cents.

Q. But the creditors were only getting forty cents?

A. Yes.

CROSS-EXAMINED.

Q. I suppose at the time that you and Mr. MacLean and Smith walked down to the Court House and made that abandonment, you never had the slightest suspicion that the firm was solvent?

A. No, we never had the slightest suspicion that the firm was solvent.

Q. It was with Mr. Hague of the Merchants Bank that you had the consultation when you decided to liquidate?

A. Yes, it was with Mr. Hague.

Q. Mr. Greenshields asked you what brought about the liquidation. Will you kindly tell us what brought your firm into trouble?

A. It is a long story.

Q. Well, make it as short as you can.

A. Principally the withdrawal of capital.

(The Defendant objects to this evidence).

(Witness continues).—The chief reason was the withdrawal of this amount, twenty-nine thousand dollars ($29,000); if it had been there we would have been all right.

Q. Now, Mr. Stewart, Mr. Greenshields asked you about this Exhibit C of Plaintiff and referred to the book debts and stock; now, the stock is put down at one hundred and twenty thousand and sixty-eight dollars and seventy-five cents ($120,068.75) in that statement?

A. Yes, that is the amount.

Q. Now is that sum the cost price, or what is it?

A. It is very much less than cost in many instances.

Q. What percentage or deduction was made?

A. There were different percentages, some ten, fifteen, twenty and twenty-five even. It is all shown in the stock sheets.

Q. It is all shown in the stock sheets?

A. Yes, it is all shown in the stock sheets.

Q. So if we had the stock sheets of this firm, and took them up, we would find that this one hundred and twenty thousand and sixty-eight dollars and seventy-five cents ($120,068.75) is the price scaled down after the reduction?

A. Yes.

Q. The reduction was made first, and the amount put in there was what would be considered a fair value on the stock?

A. Yes.

Q. And with regard to the book debts, they are put down in this statement at forty-nine thousand five hundred and thirty-six dollars ?

A. Yes.

Q. You stated to Mr. Greenshields that that represented the book debts, less how much ?

A. Fourteen thousand dollars ($14,000). That was previously written off.

Q. So both book debts and stock were scaled down

A. Yes, the book debts and stock were scaled down.

Q. You said an offer was made in the name of the firm for forty cents cash,—in the name of the estate ?

A. Yes.

Q. Where was that offer made ?

A. To the Merchants Bank.

Q. The Merchants Bank was a large creditor, was it not ?

A. Yes, the Merchants Bank was a large creditor.

By Counsel for Defendant :—

Q. Did they accept it ?

A. No, they did not accept it.

Counsel for Plaintiff Continuing :

Q. Was your, partner, John MacLean, then here ?

A. Yes he was here.

Q. Were you aware, when he left this side of the water for England that he was going to put in an offer in his own name ?

A. I was not aware.

Q. What did he go to England for, according to the understanding of the partners ?

(The Defendant objects to this question as illegal and inadmissible and not arising out of the examination-in-chief ?)

(Question waived.)

Re-Examined.

Q. This Exhibit No. two, that is put in is a copy of Mr. MacLean's account in the private ledger ?

A. Mr. MacLean's capital account in the private ledger.

Q. Now the books were kept by you in the firm ?

A. Yes, the books were kept by me.

Q. And under your directions ?

A. Yes, under my directions.

Q. And the form and manner of keeping the books were your ideas being followed out by the clerks you had under you ?

A. Yes.

Q. Now the first year's business, the balance sheet showed a profit to the credit of profit and loss account of twice eight thousand eight hundred and sixty-one dollars and thirteen cents ($8,861.13), did it not ?

A. Well, I must tell you how this is made up.

RECORD.

In the Superior Court.

No. 6. Deposition of Alexand'r Stewart, produced by Defendant, on 6th Dec., 1892—*continued.*

Q. I do not want any explanation at all. I merely want to know whether the balance sheet did not show double the amount of profit which was dealt with by the firm for that year?

A. Yes.

Q. And you carried that one half of the amount to Mr. MacLean's credit and one quarter of it to your credit, and one quarter of it to Mr. Smith's credit?

A. Yes.

Q. Now, then, that appears in the statement which I have asked you about?

A. Yes.

Q. And also the copies of your account and Mr. Smith's?

A. Yes.

Q. Now, the next year there was a different state of affairs. Your balanced sheet that year showed a loss of twelve thousand one hundred and forty-four dollars and twenty-six cents ($12,144.26) did it not?

A. That is right.

Q. And Mr. MacLean's account was debited with one half that amount?

A. Yes, Mr. MacLean's account was debited with one half that amount.

Q. And the following year there was a loss of four thousand three hundred and sixty-six dollars and forty-six cents ($4,366.46)?

A. Yes, the following year there was a loss of four thousand three hundred and sixty-six dollars and forty-six cents.

Q. And the next year, Mr. Stewart, the loss in the business was how much?

A. It was twice two thousand three hundred and seventy-seven dollars ($2,377).

Q. And each of these years the half of these total losses to the profit and loss account was carried to the debit of Mr. MacLean's capital account by you?

A. The half of the gain or loss as the case might be.

Q. Now the private drawings of each of the partners were not debited to the profit and loss account?

A. No, the private drawings of each of the partners were not debited to the profit and loss account.

Q. They were charged directly to the capital account of the firm?

A. Yes, they were charged directly to the capital account of the firm.

Q. Now, Mr. Stewart, if they had been charged by you to the debit of profit and loss account the results would have been exactly the same with a proper adjustment in the differences of the drawings?

A. Well, I would like to make a calculation first. I do not understand the latter part of your question.

Q. Under your deed Mr. MacLean was entitled to one half the profits and you were entitled to one quarter of the profits and Mr. Smith was entitled to one quarter of the profits?

A. Yes, that is right.

Q. And the profit and loss account was divided in the same proportion?

A. Yes, the profit and loss account was divided in the same proportion.

Q. So that if the drawings had been charged up to the debit of profit and loss account, it would have increased the debit side of profit and loss account by the amount of the drawings?

A. Yes, it would have increased the debit side of the profit and loss account by the amount of the drawings and make a debit entry of that amount.

Q. And that increase would have been divided?

A. No, it would have been diminished.

Q. It would have made a greater profit and loss account? There would have been a greater debit?

A. Yes, a greater debit to the profit and loss account.

Q. Now, that would have been divided: one-half to Mr. MacLean, one-quarter to you, and one-quarter to Mr. Smith, apportioning the amounts that had been drawn by you,—if you had all drawn up to the exact amount which the deed allowed, that is if Mr. MacLean had drawn six thousand dollars and you had drawn three thousand dollars and Mr. Smith had drawn three thousand dollars, it would have made no difference in the result, whether it was charged to profit and loss account and then divided, or whether charged directly to the capital account?

A. I never considered that the deed read that way.

Q. I am asking you as the man that kept those books, if the deed which allowed one of the partners to draw six thousand dollars, and the two others to draw three thousand dollars apiece, and if they had drawn up to the limit and then had been charged (instead of being charged to the capital account of the partners) the debit of profit and loss account, would it have made any difference in the balances of the firm's account?

A. No, I do not think so.

Q. Now this statement Exhibit C what was that gotten up for?

A. To show our creditors our position after the liquidation, after we had decided to liquidate. Show the creditors the position of affairs.

Q. Well, then there was a statement got up by Mr. Carnegie,—the valuation by Mr. Carnegie?

A. Yes, I believe Mr. Carnegie valued part of the assets.

Q. This was gotten up in June,—date of June the thirtieth (30), one thousand eight hundred and ninety-one (1891), but the liquidation did not take place until July?

A. Yes, that is right.

Q. Was that copied from documents you had prepared previous to July When was this statement actually figured out?

A. To the thirtieth (30) of June.

Q. How is that, when you did not liquidate until the thirtieth (30) of July?

A. We suspended on the sixteenth (16) of June, and the abandonment was on the twenty-second (22) of July.

Q. And was the inventory made after the suspension.

A. Yes, the inventory was made after the suspension.

Q. And that was done by your clerks under your instructions?

A. Yes, under my instructions, by our clerks.

RE-CROSS-EXAMINED.

Q. Now this statement C, that you have been examined on was handed to Mr. Riddell?

RECORD.

In the Superior Court.

No. 6. Deposition of Alexand'r Stewart, produced by Defendant, on 6th Dec, 1892— *continued.*

A. Yes, it was handed to Mr. Riddell.

Q. And verified by him?

A. Yes, and verified by him.

Q. Mr. Stewart, did you make these charges against the capital of the partners according to your best judgment and as the result of your experience as a business man and bookkeeper?

A. Yes I did, and I have done it for eighteen years previously, in one other firm.

Q. What firm was that?

A. The firm of Robertson, Linton & Company

Q. Now were these charges on the drawings of partners not charged against capital account in the previous firm of John MacLean & Company, when John MacLean was a partner of Mr. Heath's?

(The Defendants object to this question as illegal.)

(Question waived.)

And further deponent saith not.

A. A. URQUHART.

I, the undersigned of the City of Montreal, sworn Stenographer in this cause, do hereby certify under the oath already taken by me, that the foregoing sheets numbered from one to thirteen consecutively, being in all thirteen folios are and contain a true and faithful transcript in typewriting of the evidence of the above named witness, as by me taken by means of stenography, the whole in manner and form as required by law.

A. A. URQUHART,
Official Stenographer.

No. 7. Plaintiff's Exhibit Number One, Articles of Partnership, dated 31st December, 1886.

On this thirty-first day of December, in the year of Our Lord one thousand eight hundred and eighty-six.

Before me, John Carr Griffin, Notary Public, duly commissioned and sworn in and for the Province of Quebec, residing and practising in the City of Montreal, in the said province,

Personally appeared John MacLean, Alexander Stewart and James Hardisty Smith, all of the said City of Montreal, merchants,

Who declared unto me, the said Notary, that they had covenanted and agreed, and they do hereby covenant and agree, as follows:—

The said parties do hereby form a co-partnership for the carrying on the trade and business of merchants, for and during the term of five years, to be accounted and reckoned on and from the first day of January next, at the said City of Montreal, under the name and firm of John MacLean & Co. The capital of the said business to be by the said partners respectively put in and contributed, shall be as follows—

The said John MacLean shall contribute the amount standing at his credit in the books of the late firm of John MacLean & Company to wit: all his title and interest in the assets of said firm at that date.

The said Alexander Stewart and James Hardisty Smith will each contribute the respective amounts standing at their credit on deposit in the books of

the late firm of John MacLean & Company at the thirty-first day of December inst, which sums are to be by them deposited to the credit of the firm on said last mentioned day.

On capital so put in or standing at the credit of the several parties before mentioned, interest shall be allowed and credited at the rate of seven per centum per annum, and at every succeeding annual balance interest shall be allowed on the amounts shown at the credit of the partners on the thirty-first day of December next preceding.

There shall be kept for the said co-partnership business proper books of account after the manner of merchants which shall be balanced yearly on the thirty-first day of December of each year, and shall at all times be open to the examination and inspection of the said co-partners respectively. When said books are so balanced, a balance sheet shall be prepared and signed by the said partners, and shall not be open afterwards to objection of any kind by them or either of them, or by their respective executors, heirs or assigns, and shall be binding on and conclusive against them and their respective executors, heirs and legal representatives to all intents and purposes whatsoever.

The said partners shall devote their whole time and attention to the business of the said firm.

The said interest so to be paid on said capital sums shall be a charge on the business of the said co-partnership, and the net profits of such business after deduction of bad debts, depreciation of stock of said interest so to be paid on said capital sum, and of all charges and expenses incurred in carrying on such business, shall be divided between them the said partners in the following proportions, viz. :—

To the said John MacLean one-half, and to the said Alexander Stewart and James Hardisty Smith each one-quarter, and the losses and liabilities (if any) shall be borne by them in the like proportions.

It being, however, expressly agreed and understood, that in case of the dissolution of the said partnership by the death of any of the said partners, or in the event of any of said partners retiring from said firm, the share of the deceased or retiring partners in the profits of the said business shall be the amount shown by the balance-sheet so made and signed as aforesaid for the year terminating on the thirty-first day of December immediately preceding such death or retirement and no more, and his estate shall in no way be liable for any losses incurred since the date of such balance-sheet and shall not be entitled to any share of profits made since that date, and the amount of the share of such partner deceased or retiring shall be accounted for and paid over by the other partners less all monies actually received by such partner since the date of such balance-sheet, it being understood that the balance so established by the said last balance-sheet shall be the sole basis of such final settlement.

And in the case of any of the said partners dying before the expiration of the said five years, the capital then at his credit shall be payable in three years in six annual payments, the first payment whereof to be made not sooner than six months after the death of any such partner, such instalments bearing interest at seven per centum.

None of the said partners shall, under any circumstances, sign the name

RECORD. *In the Superior Court.*

No. 7. Plaintiff's Exhibit Number One. Articles of Partnership, dated 31st December, 1886—*continued.*

of the firm to or upon any bill, bond, note or other instrument in writing, or otherwise make use of the name or credit of the said firm for any private business or any business not strictly connected with legitimate business of the said firm, without consent in writing of his co-partners.

The said partners shall be entitled to withdraw from the said co-partnership business annually, as follows :—The said John MacLean the sum of six thousand dollars, and the said Alexander Stewart and James Hardisty Smith, each the sum of three thousand dollars.

Thus done and passed at the said City of Montreal, in the office of me, the undersigned notary, where these presents are to remain of record under the number forty-seven thousand seven hundred and eighty-nine, on the day, month and year first above written in the afternoon, and signed by the said parties, with me the said notary after being duly read.

(Signed) JOHN MACLEAN,
" A. STEWART,
" JAS. H. SMITH,
" JOHN C. GRIFFIN, N.P.

A true copy of the original hereof which remains of record in my office.

JOHN C. GRIFFIN, N.P.

No. 8. Plaintiff's Exhibit Number Two, Copy of Capital Account of John MacLean.

		Cr.	Dr.	Cr.	Dr.
1886					
July 1st.	By Balance	42177 66			
Dec. 31st.	" 6 months interest	1687 08			
"	To John MacLean's p. account		2911 44		
"	" J. Heath "		4407 38		
"	" Plant account		1334 03		
"	" Profit and Loss 6 months		23730 98		
"	" Contigent account		7000 00		
"	By Balance			4480 91	
1887					
June 30th	By 6 months interest	156 82			
Dec. 31st.	" "	156 82			
"	" Profit and Loss 6 months	8861 13			
"	To Private Drawings		5194 86		
"	By Balance			8460 82	
1888					
June 30th	By 6 months interest	296 12			
Dec. 31st.	" "	296 12			
"	To Private Drawings		6070 56		
"	" Profit and Loss		6072 13		
"	To Balance				3089 63
1889					
Dec. 31st.	To 12 months interest		216 30		
"	" Private Drawings		5540 83		
"	" Profit and Loss		2183 23		
"	" Balance				11029 99
1890					
June 30th	To 6 months interest		386 05		
Dec. 31st.	" "		386 05		
"	" Private Drawings		4429 14		
"	" Profit and Loss		2377 03		
"	" Balance				18608 26
1891					
June 30th	To Private Drawings		1979 72		
"	" 6 months interest		651 28		
"	" Profit and Loss		7840 05		
"	" Balance				29079 31

drawings 5794.66
6070.56
5540.83
4429.14
1979.72
23215.11

			Cr.	Dr.	Cr.	Dr.
1886						
Nov. 1st.	By Cash		25000 00			
Dec. 31st.	" Interest		292 47			
"	" Balance				25292 47	
1887						
June 30th	By 6 months interest		885 23			
Dec. 31st.	" "		885 23			
"	" Profit and Loss		4430 56			
"	To Private Drawings			2141 91		
"	By Balance				29351 58	
1888						
June 30th	By 6 months interest		1027 30			
Dec. 31st.	" "		1027 30			
"	To Private Drawings			2311 59		
"	" Profit and Loss			3036 07		
"	By Balance				26058 52	
1889						
June 30th	By 6 months interest		912 04			
Dec. 31st.	" "		912 04			
"	To Private Drawings			2706 72		
"	" Profit and Loss			1091 62		
"	By Balance				24084 26	
1890						
June 30th	By 6 months interest		842 94			
Dec. 31st.	" "		842 94			
"	To Private Drawings			2817 13		
"	" Profit and Loss			1188 52		
"	By Balance				21764 49	
1891						
June 30th	By 6 months interest		761 75			
"	To Private Drawings			1420 49		
"	" Profit and Loss			3920 08		
"	By Balance				17185 72	

Drawings ~~4430.56~~
2141.91
2311.59
2706.72
2817.13
1420.49
16.397.84

RECORD.

In the Superior Court.

No. 10. Plaintiff's Exhibit Number Four, Copy of Capital Account of James H. Smith.

		Cr.	Dr.	Cr.	Dr.
1886					
Nov. 1st.	By Cash	30000 00			
Dec. 31st.	" Interest	350 96			
"	" Balance			30350 96	
1887					
June 30th	By 6 months interest	1062 27			
Dec. 31st.	" "	1062 27			
"	" Profit and Loss	4430 56			
"	" Balance			36906 06	
1888					
June 30th	By 6 months interest	1291 71			
Dec. 31st.	" "	1291 71			
"	To Private Drawings		1144 92		
"	" Profit and Loss		3036 07		
"	By Balance			35308 49	
1889					
June 30th	By 6 months interest	1235 79			
Dec. 31st.	" "	1235 79			
"	To Private Drawings		2604 49		
"	" Profit and Loss		1091 61		
"	By Balance			34083 97	
1890					
June 30th	By 6 months interest	1192 94			
Dec. 31st.	" "	1192 94			
"	To Private Drawings		4491 56		
"	" Profit and Loss		1188 51		
"	By Balance			30789 78	
1891					
June 30th	By 6 months interest	1077 62			
"	To Private Drawings		567 84		
"	" Profit and Loss		3920 02		
"	By Balance			27379 54	

No. 11. Plaintiff's Exhibit Number Five, Capital Account.

Dr. DECEMBER, 31ST, 1886. Cr.

By John MacLean,	$ 4,480 91	
" Alex. Stewart,	25,292.47	
" J. H. Smith,	30,350.96	
Total Capital,		$60,124.34

JUNE 30TH, 1891.

To J. MacLean,	$29,079.31	By Alex. Stewart,	$17,185.72
" Balance For'd,	15,485.95	" J. H. Smith,	27,379.54
	$44,565.26		$44,565.26

By balance brought down, being actual capital of firm this date, $15,485.95

Drawings 1144.92
2604 49
4491.56
567 84
8808.81

RECORD

In the Superior. Court.

No 12. Plaintiff's Exhibit Number Six, Official Copy of Judicial Abandonment of John MacLean & Co., Dated 22nd July, 1891.

Province of Quebec, District of Montreal, } Superior Court,

The Merchants Bank of Canada, a body corporate and politic, carrying on business and having its chief office in the City and District of Montreal, Province of Quebec.

Plaintiffs.

John MacLean, Alexander Stewart, and James H. Smith, all of the same place, merchants and co-partners, carrying on business at said place together as such under the firm name of "John MacLean & Company."

Defendants.

The said Defendants being duly sworn, declare that they consent to abandon and hereby abandon all their property to their creditors.

That their moveable property consists of the following:—

Stock in trade, consisting of Silks, Velvets, Ribbons, Ladies' Hats, and general Millinery Goods, office and warehouse furniture and pictures, all contained in store being on St. Helen Street, in the City of Montreal,—Book accounts and Bills Receivable.

That they have no immoveable property.

That the names and addresses of their creditors and the amounts and nature of their claims are as follows:

JUNE 30TH, 1891.

	NAME AND ADDRESS.	NOTE.	OPEN.	TOTAL.
1	Smith, Sir D. A., Montreal			$25596.42
2	Merchants Bank, "			16000 00
3	Snow Bros., London	2949.19. 0	289. 3. 6	15907.69
4	Goudchaux, Edwards & Co., Lyons	2084.17.10	7. 6. 5	10275.08
5	Pawson & Co'y, London	2155.17. 6		10587.73
6	Beattie, Wilson Knowles & Co'y, Manchester	2097. 7. 0		10300.32
7	Penny, G. H. & Co'y, London	2083. 0. 0		10229.84
8	Smithson, W. F. & Co'y, Bradford		1849.12. 0	9083.58
9	Forestreet W. Co'y, London	1184.10. 1	67. 6.11	6147.97
10	Von Willer, Ulr. de G., St. Gall	599. 1.11	44. 1. 7	3158.70
11	Boughton, J. T. &. Co., Luton	735. 5. 5		3611.00
12	Grant G. & A., London	801.19.10		3938.67
13	Haye & Co'y, Luton	718.14. 3		3529.67
14	Melles Jones, Reid & Co., London	490. 4.10	131. 4.11	3052.18
15	Chaleyer, Monnier & Chaleyer, Paris		543.18. 9	2671.34
16	Hucklesby, A. & Co'y, Luton	528. 0.11		2593.29
17	Barnett & Phillips, London	528. 1. 1		2642.44
18	Gotliffe, S. L. & Co., Manchester	278. 0. 3	67.11. 8	1697.25
19	Morand, Geo., London	207. 6.10	35.17 9	1194.53
20	Sydel & Lotzmann, Annaberg	219.12 6		1078.61
21	Kurtz & Stuboeck, London	187. 8. 6	10. 2. 3	970.14
22	Foster, Porter & Co'y, London	326. 4. 6		1602.12
23	Leaf & Co'y, London	237.11. 6		1166.75
24	Rouxell, Ed. & Co., Paris	179.10. 0		881.55
25	Perry & Dawson, London	169. 0.11		830.20
26	Wolff, S. & Son, "	143. 1. 9		702.73
27	Callegari, J. "	117.10. 5		577.16
28	Bigmore, T. Luton	107. 8. 4		527.54

RECORD.

In the Superior Court.

No. 12. Plaintiff's Exhibit Number Six, Official Copy of Judicial Abandonment of John MacLean & Co., Dated 22nd July, 1891. *continued.*

	Name and Address.	Note.	Open.	Total.
29	Singer, Gebruder, Berlin	155. 2. 3		761.77
30	Percival, F. & Co'y, Luton	69. 6.11		340.56
31	Weiler, S. H. London	69.14.02		342.35
32	Vonder, Mulell & Co., Basle	64. 1. 8		314.72
33	Hall, W. & J. & Co., London	75. 2. 3		368.89
34	Miller, J. & Co.	22. 9. 9		110.43
35	Von Brucks, H. & Sons, Crefeld	37. 0. 0		181.71
36	Prott Hurts & Co., London	25.10. 2		125.28
37	Spencer, Wicks & Co., London	54.15. 2		268.92
38	Boyd, J. C. & Co., "	78.12.10		386.22
39	Wingate & Johnston, "		220.15. 1	1081.69
40	Kerr, A. & Co., "		24 2.10	118.56
41	Michau, T. & Co , "		147.19. 4	726.69
42	Fuch & Rosenberger, Berlin		360. 8. 1	1769.99
43	Rudenberg, Mastbaun & Co., Crefeld		113. 1. 9	555.38
44	Buxenstein & Co., Berlin		121. 6. 3	595.78
45	Kirkner, Katz & Co., Offenbach		78.14. 8	386.66
46	Blackburn, Geo., London		51.15. 6	254 28
47	Caruthers Bros., Luton		69.12.10	342.02
48	Rawlinson & Co'y, London		29.17.11	146.82
49	Hardy, A. & Co'y, "		21. 5.10	104.56
50	Schmidt & Sohne, Reichenbach		36. 7. 3	178.58
51	Midland Lace Co'y, Nottingham		2.13. 8	13.18
52	Schlottman, Berlin		7. 8. 5	36.45
53	Reichenback & Co., St. Gall		20. 3. 5	99.06
54	Walker, Wren & Cooper, London		11. 9.11	56.46
55	Goudchaux, Edwards & Co., London		59. 0. 4	289.83
56	Bourne, J. & Fils, Calais		18. 0	4.42
57	Mammelsdoiff Bros., London		5. 6.10	26.24
58	Woodroofe, W. "		1.15. 8	8.76
59	Newsome, West & Co		10 9. 8	51.48
60	Walker, Jos. & Sons, Huddersfield		3.17.11	19.13
61	Levy, Felix, Berlin		24.17. 0	122.04
62	Rosenberg, G., Berlin		11. 6. 6	55.62
63	Rose & Stumbles, London		5.11. 0	27.26
64	Jarroson & Laval, "		21. 8. 2	105.14
65	Seidel F., Erbenstack		4. 0. 0	19.65
66	Hecht E., London		19.15. 6	97.12
67	Harris W. B., London		17. 0	4.17
68	Crute J. & Sons. London		4. 7. 0	21.36
69	Sullivan, Drew & Co., New York			403.00
70	Bianchi F. & Co., "			81.50
71	Wall J. J., "			46.65
72	Kay W. F., Phillipsburg, rent and taxes privileged.			1390.20
73	Standen B., London, Salary account do			55.24
74	Macdonald J. A., do do do			642.50
75	Andrew, A., do do do			308.29
76	Wilson, H. O., do do do			93.16
77	Matthews W. B., do do do			19.80
78	Ins. Co. of N. A., Montreal			140.57
79	City of Montreal taxes privileged			321.50
80	Jellyman, R. & Co., Montreal			21.72
81	Snow, W. Montreal			3.25
82	Paterson, J. A. & Co., Montreal			9.21
83	Sundry Petty			623.25
84	Merchants Bank of Canada, Indirect on paper under discount			115,989.00

In the Superior Court.

No. 12. Plaintiff's Exhibit Number Six, Official Copy of Judicial Abandonment of John MacLean & Co., Dated 22nd July, 1891. *continued.*

And the said deponents have signed.

Sworn before me at Montreal, this twenty-second day of July, one thousand eight hundred and ninety-one. } (Signed) JOHN MACLEAN. " A. STEWART. " JAS. H. SMITH.

(Signed,) L. H. COLLARD,
Deputy Prothonotory of the said Superior Court.
(TRUE COPY,)
A. E. DUMESNIL,
D. P. S. C.

10

No. 13. Plaintiff's Exhibit Number Seven, Statement of Account Showing Depletion of Capital of Stewart & Smith by Overdraft of John MacLean.

Statement of account, showing amount by which the capital of Mr. Alexander Stewart and Mr. J. H. Smith was depleted by the overdraft of Mr. John MacLean.

JUNE 30TH, 1891.

20 Amount of capital standing to credit of Alexander Stewart	$17,185 72
Amount of capital standing to credit of J. H. Smith	27,379 54
	$44,565 26
Actual capital of firm at this date	$15,485 95
Actual depletion of Messrs. Stewart and Smith capital	$29,079 31

No. 14. Plaintiff's Exhibit Number Eight, Copy of Defendant's Offer of Composition, Dated 3rd October, 1891—

30 In the matter of

JOHN MACLEAN & CO.,

Insolvents.

We, the undersigned, inspectors to Estate of John MacLean & Co., having taken a communication of John MacLean's offer of settlement as follows :—

In the matter of

JOHN MACLEAN & CO.,

40 *Insolvents.*

To the curators of said firm :—

I hereby renew and confirm the offer of composition upon the liabilities of said firm already made by me as follows :—

To pay all privileged and secured claims and expenses in insolvency in full in cash, and a composition upon the ordinary liabilities at the rate of fifty cents on the dollar to Canadian and American creditors, and ten shillings

RECORD

In the Superior Court.

No. 14. Plaintiff's Exhibit Number Eight, Copy of Defendant's Offer of Composition, Dated 3rd October, 1891. *continued.*

in the pound to European creditors, payable by my promissory note dated 1st September, 1891, in three instalments as follows:—(1) Notes at four months after said date for Fifteen cents on the dollar or Three Shillings in the pound; (2) Notes at Eight months after said date for fifteen cents on the dollar or three shillings in the pound, and (3) Notes at twelve months from said date for twenty cents on the dollar or four shillings in the pound the said last-mentioned notes (at Twelve months), to be secured by the endorsement of Mr. A. F. Gault,—the whole on condition that the assets and estate generally of the said John MacLean & Co. be transferred to me individually and that a discharge be granted by the creditors to myself, Mr. Alexander Stewart and Mr. James Smith, the former members of said firm of John MacLean & Co.

MONTREAL. 3rd October, 1891.

(Sgd.) JOHN MACLEAN.

Having taken communication of the foregoing offer I hereby agree to endorse Mr. MacLean's promissory notes at twenty cents on the Dollar, or Four shillings in the pound for the Third instalment of the composition.

(Sgd.) A. F. GAULT,
By Atty R. L. Gault.

No. 15. Plaintiff's Exhibit Number Nine. Statement Showing Proportion of Defendant's Overdraft Due to Plaintiff.

Plaintiff's capital June 30th, 1891	$17,185 72
Smith's Capital Account	27,379 54
Total Capital of Plaintiff and Smith	$44,565 26
Capital of firm July 22nd, 1891	15,485 95
Defendant's overdraft	$29,079 31

Proportion of Defendant's overdraft due to Plaintiff—

$$\frac{17,185\ 72}{44,565\ 26} \times \frac{29,079\ 31}{1} = \$11,213\ 20$$

STATEMENTS FROM FOLIOS 218–219 OF FIRM'S PRIVATE LEDGER, SHOWING STATE OF FIRM'S AFFAIRS AS SHOWN BY BALANCE OF 31ST DECEMBER, AND SIGNED BY PLAINTIFF AND DEFENDANT.

No. 16. Plaintiff's Exhibit A at Enquete. Statement from Private Ledger, Showing State of Firm's Affairs as Shown by Balance of 31st December, 1889—

FOLIO 218-219.

PRIVATE LEDGER.

1889			
Dec. 31st.	Bank of Scotland		$12,636 43
	Bills receivable		5 055 75
	Plant, Montreal, London		3 100 00
	Stock on hand		137,360 55
	Open accounts		36 426 93
	Charges 1890		4,242 30
			$198,821 96
1889			
Dec. 31st.	Cash on hand		344 67
	Bills payable		157,899 87
	Open accounts		12,165 77
	W. F. Kay		750 00
	Salaries		523 41
	Surplus		47,138 24
			$198,821 96

The foregoing is a correct statement of the affairs of firm as shown by Balance of 31st December, 1889.

Signed, { JOHN MACLEAN, A. STEWART.

No. 17. Plaintiff's Exhibit B at Enquete, Copy of Statement Furnished Merchants Bank by Mr. Stewart, Dated 31st December, 1889—

COPY FOLIO 344.

PRIVATE LETTER BOOK.

STATEMENT 31ST DECEMBER, 1889.

Assets		
	Bank of Scotland	$12,636 43
	Bills receivable	5,055 75
	Plant	3,100 00
	Stock	137,360 55
	Open accounts	36,426 93
	Charges 1890	4,242 30
		$198,821 96
Liabilities		
	Cash	$ 344 67
	Bills payable	157,899 87
	Open accounts	12,165 77
	W. F. Kay	750 00
	Salaries	523 41
	Surplus	47,138 24
		$198,821 96

RECORD.

In the Superior Court.

No. 18. Plaintiff's Exhibit C at Enquete. Statement of John MacLean & Co., Dated June 30th, 1891.

STATEMENT.

JOHN MACLEAN & CO.

MONTREAL.

June 30, 1891.

	These figures are in pencil.	These figures are part in pencil, part in ink.
Assets.		
Stock	$120,068 75	$120,068 75
Book Debts	49,532 43	49,536 94
Bills receivable	1,065 46	1,865 46
Plant	1,600 00	1,600 00
Bank of Scotland	2,618 26	2,618 26
Cash on hand and Bank	4,616 08	4,616 08
	$180,300 98	$180,305 49
Liabilities.		
Bills Payable G. B		97,198 29
Bills Payable Mer. Bk		16,000 00
Bills Payable D. A. S		25,596 52
Open accounts	23,627 62	23,632 13
Rent and taxes		1,445 44
Salaries		1,063 53
Surplus		15,369 58
		$180,305 49
Merchants Bank indirect		115,989 00
Business and water taxes		321 50

No. 19. Plaintiff's Exhibit D at Enquete. Analysis of John MacLean's Capital Account.

Dec. 31st, 1887.	Drawings	5,194 86	
Dec. 31st, 1888.	"	6,070 56	
Dec. 31st, 1889.	"	5,540 83	
Dec. 31st, 1890.	"	4,428 14	
June 30th, 1891.	"	1,979 72	
			$23,215 11
Interest on capital at credit January 1st, 1887-88		905 88	
Interest on capital at Debit January 1st, 1889-90-91		1,639 68	
Difference			$733 80
His share of loss in business from January 1st, 1887, to June 30th, 1891			9,611 31
			$33,560 22
Dec. 30th, 1886.	Capital	4,480 91	
June 30th, 1891.	Overdraft	29,079 31	
			$33,560 22

Province of Quebec, District of Montreal. } Superior Court,

The thirteenth day of October, one thousand eight hundred and ninety-one.

Present—The Honorable Mr. Justice DOHERTY,

In re

John MacLean & Co. - - - - - - - Insolvent.

Alexander F. Riddell, Curator, - - Petitioner,

(Stamps.)

Having seen and examined the petition of said curator this day presented; representing that said John MacLean of the said firm of John MacLean & Co., insolvents, has made an offer of composition which has been accepted by his creditors, upon the following terms and conditions;

To pay all privileged and seemed claims and expenses in insolvency in full in cash and a composition upon the ordinary liabilities at the rate of fifty cents on the dollar to Canadian and American creditors, and ten shillings in the pound to European creditors, payable by his promissory notes dated first September, one thousand eight hundred and ninety-one, in three instalments as follows: (1) Notes of four months after said date for fifteen cents on the dollar or three shillings in the pound. (2) Notes at eight months after said date for fifteen cents on the dollar or three shillings in the pound, and (3) Notes at twelve months from said date for twenty cents on the dollar or four shillings in the pound, the said last mentioned notes (at twelve months) to be secured by the endorsement of Mr. A. F. Gault, of the City of Montreal, merchant, the whole on condition that the assets and estate generally of the said John MacLean & Co. be transferred to him, the said John MacLean individually, and that a discharge be granted by the creditors to the said John MacLean, Alexander Stewart and James Smith, the former members of the said firm of John MacLean & Co.;

That the said A. F. Gault has agreed to endorse the said John MacLean's promissory notes at twenty cents on the dollar or four shillings in the pound for the third instalment of the aforesaid composition;

That the said John MacLean, in consideration of the creditors of the said insolvents waiving security on the first and second instalments of the said composition, has agreed by letter of the seventh October instant to hold the assets of the said estate so to be transferred to him until intact for the benefit of the said creditors and has thereby undertaken to place no lien upon the assets so to be transferred to him until the said first and second payments of the said composition are satisfied, praying said petitioner for authorization to accept the said composition and to transfer the said assets to said John MacLean, having also examined the authorization of the inspectors of said estate fyled of record and deliberated;

I, the undersigned Judge do authorize the said curator to accept the said composition and to transfer the assets and estate generally of the said firm to the said John MacLean upon receiving from the said John MacLean the composition notes and cash necessary to carry out the same.

(Signed) M. DOHERTY,
J. S. C.

RECORD.

In the Superior Court.

No. 21. Defendant's Exhibit Number Two. Notarial Transfer of Estate to Defendant, Dated 6th November, 1891, with Defendant's Offer for Estate, Confirmation by Inspectors, Judge's Order Authorizing Transfer, and List of Book Debts Attached.

Province of Quebec, District of Montreal. } Superior Court.

The thirteenth day of October, one thousand eight hundred and ninety-one.

Present—The Hon. Mr. Justice DOHERTY.

In re

John MacLean & Co., - - - - - Insolvent.

Alexander F. Riddell, Curator, - - - Petitioner.

(Stamps.)

Having seen and examined the petition of said curator, this day presented, representing that said John MacLean of the said firm of John MacLean & Co., insolvents, has made an offer of composition which has been accepted by his creditors upon the following terms and conditions :—

To pay all privileged and secured claims and expenses in insolvency in full in cash and a composition upon the ordinary liabilities at the rate of fifty cents on the dollar to Canadian and American creditors, and ten shillings in the pound to European creditors, payable by his promissory notes, dated first September, one thousand eight hundred and ninety-one, in three instalments, as follows : (1) Notes at four months after said date for fifteen cents on the dollar, or three shillings on the pound. (2) Notes at eight months after said date for fifteen cents on the dollar, or three shillings in the pound, and (3) notes at twelve months from said date for twenty cents on the dollar or four shillings in the pound, the said last-mentioned notes (at twelve months) to be secured by the endorsement of Mr. A. F. Gault, of the City of Montreal, merchant, the whole on condition that the assets and estate generally of the said John MacLean & Co. be transferred to him, the said John MacLean, individually, and that a discharge be granted by the creditors to the said MacLean, Alexander Stewart and James Smith, the former members of the firm of John MacLean & Co.

That the said A. F. Gault has agreed to endorse the said John MacLean's promissory notes at twenty cents on the dollar or four shillings in the pound for the third instalment of the aforesaid composition.

That the said John MacLean in consideration of the creditors of the said insolvent waiving security on the first and second instalments of the said composition has agreed by letter of October instant to hold the assets of the said estate so to be transferred to him intact for the benefit of the said creditors and has thereby undertaken to place no lien upon the assets so to be transferred to him until the said first and second payments of the said composition are satisfied, and praying said Petitioner for authorization to accept the said composition and to transfer the said assets to said John MacLean, having also examined the authorization of the inspectors of said estate fyled of record and deliberated.

I, the undersigned Judge, do authorize the said curator to accept the said composition and to transfer the assets and estate generally of the said firm to the said John MacLean, upon receiving from the said John MacLean the composition notes and cash necessary to carry out the same.

(Signed) M. DOHERTY,
J. S. C.

True copy.
A. E. DUMESNIL,
D. P. S. C.

This is the copy of the authorization B referred to in the deed of conveyance from Alexander F. Riddell ès qual to John MacLean, executed before the undersigned notary this fifth day of November, 1891, and thereunto annexed.

In test veritatis.

(Signed) ALEX. F. RIDDELL,
" JOHN MACLEAN,
" W. DE M. MARLER, N.P.

A true copy.
W. DE M. MARLER, N.P.

Before Mtre. William de M. Marler, the undersigned Public Notary for the Province of Quebec, residing at the City of Montreal.

Appeared Alexander Fowler Riddell, of the City of Montreal, accountant, herein acting in his quality of Curator to the property abandoned by the Commercial Firm of John MacLean & Co., heretofore carrying on business at the City of Montreal, as "Wholesale Dry Goods Merchants", composed of John MacLean, Alexander Stewart, and James Smith, all of Montreal aforesaid, Wholesale Dry Goods Merchants as the members thereof, as such Curator duly appointed on the advice of their Creditors by Mr. Justice DeLorimier, one of the Judges of the Superior Court for Lower Canada, in the District of Montreal, on the Eleventh of August last, of the one part; and the said John MacLean of the other part.

Who declared unto the said Notary:

That the said John MacLean and Co. became insolvent and the said Mr. Riddell was appointed curator to their estate as above mentioned.

That by letter dated the third of October last the said John MacLean offered a Composition to the creditors of his said firm as follows: viz. to pay all privileged and secured claims and expenses in insolvency in full in cash and a composition upon the ordinary liabilities at the rate of fifty cents on the dollar to Canadian and American creditors, and ten shillings in the Pound to European creditors payable by his promissory note dated the first of September last in three instalments as follows:

1o. Notes at four months after said date fifteen cents on the dollar or three shillings in the pound, and 2o. Notes at eight months after said date fifteen cents on the dollar or three shillings in the pound, and 3o. Notes at twelve months from said date for twenty cents on the dollar or four shillings in the pound, the said last mentioned notes (at twelve months) to be secured by the endorsement of Mr. A. F. Gault, the whole on condition that the assets

RECORD.

In the Superior Court.

No. 21. Defendant's Exhibit Number Two. Notarial Transfer of Estate to Defendant, Dated 6th November, 1891. with Defendant's Offer for Estate, Confirmation by Inspectors, Judge's Order Authorizing Transfer and List of Book Debts Attached. *continued.*

and estate generally of the said John MacLean & Co. be transferred to him the said John MacLean individually and that a discharge be granted by the creditors to himself, Mr. Alexander Stewart and Mr. James Smith, the former members of said firm.

That by his letter dated the seventh day of October last, addressed to the said curator, the said John MacLean, in consideration of the creditors of said firm, waiving security on the first and second of the said composition instalments, agreed to hold the assets of the said estate, to be transferred to him intact for the benefit of the creditors, and undertook to place no lien upon the assets, to be transferred him, such undertaking to remain in force until the first and second payments of said composition should be satisfied.

That the inspectors to the said insolvent estate, appointed by Mr. Justice DeLorimier, by the judgment above mentioned to wit, John S. Meredith, Reuben Millichamp and Joseph Hardisty, confirmed the acceptance by the creditors of the offers made by the said John MacLean in his said letters, and authorized and instructed the said curator to apply for an order of Court to transfer the assets and estate generally, of the said John MacLean, on the curator receiving the composition notes and cash necessary to carry out the said settlement, the whole as appears by the writing signed by the said three inspectors, dated the seventh of October last, which remains hereunto annexed, marked "A" and signed for identification by the parties hereto in the presence of the said notary.

That by an authorization granted by Mr. Justice Doherty, one of the Judges of the Superior Court in the District of Montreal, on the thirteenth of October last, an authentic copy of which remains hereunto annexed marked "B," and signed for identification by the parties hereto in the presence of the said notary, the said curator was authorized to accept the said composition and to transfer the assets and the estate generally, of the said firm to the said John MacLean, upon receiving from him the composition notes and cash necessary to carry out the same.

Wherefore these presents and I the said Notary witness:

That the said Mr. Riddell as such curator acknowledges to have received of and from the said John MacLean in cash the amount of the privileged and secured claims against the said John MacLean & Co. and the expenses in insolvency and the promissory notes of said Mr. MacLean, dated the first of September last, for the various creditors at four months from date for fifteen cents in the dollar or three shillings in the pound, at eight months from date for fifteen cents in the dollar or three shillings in the pound, and at twelve months from date for twenty cents in the dollar or four shillings in the pound, the latter, namely those at twelve months from said date being endorsed by the said A. F. Gault, and in consideration thereof and of the said John MacLean undertaking and obliging himself, as he now doth, to pay so much of the rent due and to become due under the lease from W. F. Kay of the premises occupied by the said late firm as may be a priviledged claim, the said curator authorized as aforesaid hereby assigned, transfers and makes over unto the said John MacLean thereof accepting all the assets and estate generally of the said late firm of John MacLean & Co., as they existed at the time the said curator was appointed, includ-

No. 21. Defendant's Exhibit Number Two. Notarial Transfer of Estate to Defendant, Dated 6th November, 1891, with Defendant's Offer for Estate, Confirmation by Inspectors, Judge's Order Authorizing Transfer and List of Book Debts Attached. *continued.*

ing the stock in trade, furniture and office fixtures, books of account, book debts and bills receivable, cash on hand and in the bank, a list or schedule of the books debts and bills receivable, as on the thirtieth day of June last being hereunto annexed marked "C" and signed for identification by the parties in the presence of the said Notary.

The proceeds of the sales of stock and the collection of the debts to take the place of the assets so collected and realized and being as Mr. Riddell now declares included in the cash handed over by him to Mr. MacLean of all of which assets the said Mr. MacLean acknowledges himself now in possession, and in consideration thereof and of the said John MacLean having been in possession of all the stock and assets hereby transferred ever since the insolvency grant to the said curator a full and final discharge from all further accounting in the promise.

And the said John MacLean, as already agreed by him, binds and obliges himself to keep the assets so transferred to him intact for the benefit of the holders of the said notes and not to place any lien or privilege upon such assets or suffer any to exist thereon until the said first and second payment of the said composition are satisfied.

Whereof acte done and passed at the City of Montreal, on this sixth day of November, one thousand eight hundred and ninety-one, and of record in the office of the said Mtre. Marler, under No. seventeen thousand five hundred and sixteen, and after due reading hereof the parties signed in the presence of the said Notary.

(Signed) ALEX F. RIDDELL,
" JOHN MACLEAN,
" W. de M. MARLER, N.P.

A true copy of the original hereof remaining of record in my office. Three original notes are good. Three words erased are null.

W. de M. MARLER.

"A"

In the matter of

JOHN MACLEAN & Co.,

Insolvents.

To the Creditors of said Firm.

I hereby renew and confirm the offer of composition upon the Liabilities of said Firm already made by me as follows :—

To pay all priviledged and secured claims and expenses in insolvency in full in cash and a composition upon the ordinary liabilities at the rate of fifty cents on the dollar to Canadian and American creditors and ten shillings in the pound to European creditors, payable by my promissory notes dated 1st September, 1891, in three instalments as follows :—

(1) Notes at four months after said date for fifteen cents on the dollar or three shillings in the pound; (2) Notes at eight months after said date for

RECORD.

In the Superior Court.

No. 21. Defendant's Exhibit Number Two. Notarial Transfer of Estate to Defendant, Dated 6th November, 1891, with Defendant's Offer for Estate, Confirmation by Inspectors, Judge's Order Authorizing Transfer and List of Book Debts Attached. *continued.*

fifteen cents on the dollar or three shillings in the pound, and (3) Notes at twelve months from said date for twenty cents on the dollar or four shillings in the pound: the said last mentioned notes (at twelve months) to be secured by the endorsement of Mr. A. F. Gault:—the whole on condition that the assets and estate generally of the said John MacLean & Co. be transferred to me individually and that a discharge be granted by the creditors to myself, Mr. Alexander Stewart and Mr. James Smith, the former members of said firm of "John MacLean & Co."

(Signed) JOHN MACLEAN.

Montreal, 3rd October, 1891.

Having taken communication of the foregoing offer I hereby agree to endorse Mr. MacLean's promissory notes at twenty cents on the dollar or four shillings in the pound for the third instalment of the composition.

(Signed) A. F. GAULT,
by Atty. R. L. GAULT.

Montreal, 7th October, 1891.

To A. F. RIDDELL, Curator,
Estate JOHN MACLEAN & Co.,
Montreal.

Dear Sir:

In consideration of the creditors of the firm John MacLean & Co. waiving security on the first and second instalments of the composition settlement effected by me, I hereby agree to hold the assets of the said estate to be transferred to me intact for the benefit of the said creditors, and I hereby undertake to place no lien upon the assets to be transferred to me, this undertaking to remain in force until the said first and second payments of the said composition are satisfied:—

Yours truly,
(Signed) JOHN MACLEAN.

In the matter of

JOHN MACLEAN & Co.,
Insolvent.

We, the undersigned, Inspectors to estate of John MacLean & Co., having taken communication of Mr. John MacLean's offer of settlement as follows:—

In the matter of

JOHN MACLEAN & Co.,
Insolvent.

To the Creditors of said Firm:—

I hereby renew and confirm the offer of composition upon the liabilities of said firm already made by me as follows:—

To pay all privileged and secured claims and expenses in insolvency in full in cash and a composition upon the ordinary liabilities at the rate for fifty

cents on the dollar to Canadian and American creditors, and ten shillings in the pound to European creditors, payable by my promissory notes dated 1st September, 1891, in three instalments as follows: (1) Notes at four months after said date for fifteen cents on the dollar or three shillings in the pound. (2) Notes at eight months after said date for fifteen cents on the dollar or three shillings in the pound, and (3) notes at twelve months from said date for twenty cents on the dollar or four shillings in the pound, the said last-mentioned notes (at twelve months) to be secured by the endorsement of Mr. A. F. Gault—the whole on condition that the assets and estate generally of the said John MacLean & Co. be transferred to me individually and that a discharge be granted by the creditors to myself, Mr. Alexander Stewart and Mr. James Smith, the former members of said firm of John MacLean & Co.

Montreal, 3rd October, 1891.

(Signed) JOHN MACLEAN.

Having taken communication of the foregoing offer I hereby agree to endorse Mr. MacLean's promissory notes at twenty cents on the dollar or four shillings in the pound for the third instalment of the composition.

(Signed) A. F. GAULT,
By Atty. R. L. GAULT.

And also of the following letter by Mr. MacLean to the Curator:

Montreal, 7th October, 1891.

To A. F. RIDDELL,
Curator,
Estate JOHN MACLEAN & Co.,
Montreal.

DEAR SIR:

In consideration of the creditors of the firm of John MacLean & Co., waiving security on the first and second instalments of the composition settlement effected by me, I hereby agree to hold the assets of the said estate to be transferred to me intact for the benefit of the said Creditors, and I hereby undertake to place no lien upon the assets to be so tranferred to me: this undertaking to remain in full force until the said First and Second payments of the said composition are satisfied.

Yours truly,

(Signed), JOHN MACLEAN.

Hereby confirm the acceptance by the creditors of the said settlement and authorize and instruct the Curator to apply for an Order of Court to transfer the assets and estate generally of the said firm to Mr. John MacLean, on the Curator receiving from Mr. John MacLean composition notes and cash necessary to carry out the said settlement.

Montreal, 7th October, 1891.

(Signed), R. MILLICHAMP,
J. S. MEREDITH,
J. HARDISTY.

RECORD.

In the Superior Court.

No. 21. Defendant's Exhibit Number Two. Notarial Transfer of Estate to Defendant, Dated 6th November, 1891, with Defendant's Offer for Estate. Conformation by Inspectors, Judge's Order Authorizing Transfer and List of Book Debts Attached. *continued.*

This is the writing marked "A" referred to in the deed of conveyance from Alexander F. Riddell *es qual* to John MacLean, executed before the undersigned Notary, this sixth of November. 1891, and thereunto annexed to form part thereof.

In test veritatis,

ALEX. F. RIDDELL,
JOHN MACLEAN,
W. de M. MARLER, N.P.

A true copy.

W. de M. MARLER.

IN THE MATTER OF JOHN MACLEAN & CO., MONTREAL.

LIST OF OPEN ACCOUNTS RECEIVABLE.

NAME AND ADDRESS.		AMOUNT.
Bryne Miss,	Montreal	13.75
Ray Joseph,	"	6.00
Ray & Beaudoin,	"	6.00
Irvin, E. & Co.,	"	35.40
May, Thomas & Co.,	"	5.66
Morgan, H. & Co.,	"	440.59
Beauchamp, L. L., & Co.,	"	34.04
Gingras, L. E.,	"	29.35
Lanthier & Archambault,	"	72.46
Arcand Freres,	"	58.33
David, M.,	"	50.99
Murphy, John & Co.,	"	.90
Derriger, Mde.,	"	61.39
Gall, Miss,	"	145.04
Gagnon, A.,	"	5.38
Caverhill, Kissock & Binmore,	"	7.04
Cinq-Mars, E.,	"	25.55
William, A., T.	"	7.13
Patenaude, Miss,	"	66.93
Gagnon, C. L. & Co.,	"	32.87
Foley, Mrs. J.,	"	19.35
Desjardins, L.,	"	43.05
Lafrance, P.,	"	9.75
Gagnon & Allary,	"	2.40
Dupuis & Labelle,	"	2.93
Martin & Dulude,	"	3.85
Normandin, J. & A.,	"	2.89
Vallée, C.,	"	872.35
Morin & Julien,	"	55.37
McGinty, Mrs.,	"	6.57
Fleury & Bouthillier,	"	15.69
Prevost H. & Co.,	"	271.79
Gorrie, Miss,	"	163.48
Brault, Miss R.,	"	3.50
Latour, A. H.,	"	43.78
Hodgson, Sumner & Co.,	"	3.09
Gill, Miss J. E.,	"	1.13
Boisseau Freres,	"	274.30

	NAME	ADDRESS.	AMOUNT.
	Labrecque, Miss,	Montreal	369.65
	Boudreau, J. M.,	"	105.07
	Dagenais, E.,	"	5.68
	Sauvé, A.,	"	21.18
	Johnston, Jas. & Co.,	"	5.30
	Tousignant, N.,	"	38.91
	Ogilvy, J. A. & Son,	"	197.97
	Hamilton, Hy. & N. E.,	"	457.97
	Scroggie, W. H.,	"	80.12
10	Wright, M.,	"	516.62
	Kennedy, Miss,	"	1099.62
	Jetté & Lemieux,	"	112.01
	Cantlie, Mrs. J. H.,	"	26.67
	Prevost, L. A.,	"	2.22
	Aiken, John, & Co,	"	6.50
	La Cie. Générale des Bazars,	"	40.89
	Letendre & Arsenault,	"	705.01
	Valiquette & Valiquette,	"	171.60
	Drake, Miss,	"	2.15
	Calder, Miss,	"	5.15
	Rivet, J.,	"	5.66
	Desjardins, P.,	"	18.50
20	Paiement, Miss,	"	12.28
	Larose & Paquin,	"	469.68
	Dorais, Mde,	"	70.21
	Chrétien & Co.,	Sorel	26.06
	Mathieu, F. A.,	Montreal	47.03
	Gauthier, G.,	"	2.45
	Carsley, S.,	"	12.00
	Webster, Mrs.,	"	25.00
	Desjardins, Chas.,	"	30.66
	Vanier & Lesage,	"	3.13
	Dupuis Freres,	"	83.45
	Leblanc, J. E.,	"	28.72
30	Wright, P.,	"	172.42
	Fournier, Miss,	"	68.66
	Jordan, Miss,	"	73.35
	Boudrias, Miss,	"	34.43
	Beaudain, S. M.,	"	428.69
	Wright, Mrs. John,	"	8.93
	Julien, Mrs. J. A.,	"	16.17
	Fallon, Mrs.,	"	2.23
	Paquet & Dagenais,	"	1.67
	Gagnon, D., & Co.,	"	162.88
	St. Pierre, Miss,	"	1.00
	Galarneau, H.,	"	4.73
	Duclos, R.,	"	1.15
40	Witham, Jas. & Co.,	"	92.07
	Archambault Freres,	"	16.98
	Bourdeau, J. R.,	"	7.10
	Cameron, Geo. A.,	"	4.25
	Maisan, F. X.,	"	1.00
	Benjamin, V. R.,	"	8.55
	Aumond, R.,	"	17.83
	Seers & Prieur,	"	23.89
	Poupart, De Rousselle & Corbeille,	"	126.30
	Vineberg & Co.,	"	123.21

RECORD.

In the Superior Court.

No. 21. Defendant's Exhibit Number Two. Notarial Transfer of Estate to Defendant, Dated 6th November, 1891, with Defendant's Offer for Estate, Confirmation by Inspectors, Judge's Order Authorizing Transfer and List of Book Debts Attached. *continued.*

RECORD.

In the Superior Court.

No. 21. Defendant's Exhibit Number Two. Notarial Transfer of Estate to Defendant, Dated 6th November, 1891, with Defendant's Offer for Estate, Confirmation by Inspectors, Judge's Order Authorizing Transfer and List of Book Debts Attached. *continued.*

NAME.	ADDREES.	AMOUNT.
Francœur & Ste. Marie,	Montreal.	19.65
Cadieux & Dérome,	"	4.50
Dubuc & Désautels.	"	35.69
Lonsdale, Reid & Co.,	"	4.40
Hudon, P,,	"	5.45
Cuddy, L.,	"	15.46
Robert, J. B.,	"	7.71
Leduc, Mde,	"	.38
Dagenais, Miss,	"	5.00
Dominion Express Co.,	"	65.43
Burns, B. F.,	Halifax	512.27
Ford, G. E.,	Sackville	5.00
Edgecomb, F B.,	Fredericton	167.30
Robinson, Miss A. E.,	Windsor	450.40
Furbell, W. A.,	Sault Ste. Marie	14.01
Evans, Mrs. S. M.,	Eganville	79.28
Murphy, J. L.,	Carleton Place	324.13
Lafond. Geo.,	Hull	38.19
Boles, John E.,	Ingersoll,	39.35
Shearman, T., & Co.,	Toronto	4.26
Wright Bros.,	Winnipeg	9.68
Lawrill, D. C. & Co.,	Buckingham	151.81
McDonald, Jennie,	Arnprior	92.06
McLean & Mitchell,	Toronto	41.15
Hinman, Mrs., Mr. C. A,	Hamilton	99.72
Lajoie, L.,	Three Rivers.	55.16
Mills Bros.,	Egansville	208.22
Doxsee & Co.,	Napanee	104 79
MacKay & Co.,	Port Arthur	3.10
Kirkpatrick, Mrs. R. C.,	Parrsboro.	344.76
Purviss, Miss A M.,	Toronto:	13.67
Vamvart, G. W.,	Woodstock	56.59
Brigall & Thompson,	Belleville	27.48
Paquet, Z,	Quebec	200.89
Syndicat de Québec,	"	1232.78
McLeod, W. & Co.,	Georgetown	110.03
Laframboise, Md.,	Buckingham	53.92
Snyder, Mrs. G. S.,	Smith's Falls	85.61
Walsh & Steacy,	Kingston	9.96
Akin, A. C.,	Cornwall	49.05
Gill, Miss M.,	Grenville	52.49
Drolet, D.,	Quebec	441.77
Alexander, A. E.,	Campbellton	26.05
Carter, Mrs.	Bathurst	313.42
McVeen, G,	Ottawa.	11.59
Cabot, W. H.,	Halifax	16.48
Bland, T.,	Quebec.	38.12
Ford & Murphy,	Mitchell	30.18
Conway, E. & K.,	Halifax	5.85
Charron, Mde,	Ottawa.	89.74
Hanna, Miss A.,	Athens	37.43
Lacey, B.,	Osceola	16.17
Kidd, T. A.,	Burritts Rapids	31.09
Murphy, Mrs. J.,	Iroquois	21.70
Holliday, Geo.,	Arnprior.	4.46
Daniel & Robertson,	St. John	20.90

NAME.	ADDRESS.	AMOUNT
Arsenault Freres,	Sorel	39.71
Armstrong, Miss E.,	Ottawa	69.51
Lussier, A.,	Sorel	167.78
Hunter, Mrs. T.,	Auitsville	112.73
McDonald, Mrs. C. M.,	Cornwall	121.21
Bedard & Co.,	Ottawa	196.16
Masson, Mrs. C. M.,	St. John	46.64
Hickey, M. & Co.,	Kingston	173.14
Mumble, Miss,	Kemptville	29.04
Hayes, Miss R.,	Fredericton	3.00
Jones, Mrs. J ,	Cowansville	15.87
Kearney, H.,	Roxton Falls	5.19
Gagnon, Jane,	L'Avenir	39.16
Gilbray, Wm. & Co.,	Smith's Falls	20.00
Cameron & McTavish,	St. Stephen	7.38
Gilman, Miss,	Kemptville	25.78
Gauthier, Mrs. A.,	Valleyfield	29 96
Arnson & Stone,	Toronto	28.63
Foy & Co.,	Port Hope	102.12
Baird & Riddle,	Charletown Place	2.25
Hynes, Misses C. & M.,	Toronto	181.69
Waters, James, & Bros.,	Campbellford	3.05
Calquhoun, Mrs.,	Morrisburg	58.65
Shaw & Mathison,	Perth	53 82
Brunelle, M.,	St. Simon	25.73
Cross, Thomas,	Madoc	58.85
Murray, W. A. & Co.,	Toronto	167.90
Marin, F. X.	St. Hyacinthe	187.25
McTaggart, Miss,	Kingston	131.47
Paisley & Morton,	Brandon	18.66
Lepage, H. G.,	Rimouski	153.39
Alexander & Co.,	Winnipeg	32.66
Argue, Mrs.,	Smith's Falls	380.71
Wallace J W.	Halifax	86.77
MacPherson, James,	Halifax	9.00
Carman, D. E ,	Prescott	94.64
McElray, H. & Son,	Richmond	17.20
Young, Mrs. H ,	Charlottetown	42.16
Straith, McDonald,	Windsor	388.17
Patton Thomas & Co,	St John	239.64
White & Co.,	Sault Ste Marie	62.98
Dallaire T,	St Marie Bauce	14.40
Paradis C O,	Sorel	15.60
Ayer E J,	Amherst	74.34
Lessard Miss,	Coaticooke	323.05
Cote & Taguy,	Quebec	174.09
White Mrs W T,	Grenville	71.82
Ganell & Wrong,	Aylmer	5.00
Harris R D G,	Canning	44.25
Dowler F,	Guelph	159 85
Ellism C S,	Sarnia	15.35
McKay Bros,	Hamilton	13.23
Godin Miss D,	Three Rivers	15.13
Welker Miss Mennie,	Ottawa	4.50
Kerr Miss E,	Lennoxville	18.90
Fortin & Rayer,	Quebec	184.02

RECORD.

In the Superior Court.

No. 21. Defendant's Exhibit Number Two. Notarial Transfer of Estate to Defendant, Dated 6th November, 1891, with Defendant's Offer for Estate, Confirmation by Inspectors, Judge's Order Authorizing Transfer and List of Book Debts Attached. *continued.*

RECORD.

In the Superior Court.

No. 21. Defendant's Exhibit Number Two. Notarial Transfer of Estate to Defendant, Dated 6th November, 1891. with Defendant's Offer for Estate, Confirmation by Inspectors, Judge's Order Authorizing Transfer and List of Book Debts Attached. *continued.*

NAME.	ADDRESS.	AMOUNT.
Moran Miss M,	Portage du Fort	227.75
Elliott & Hamilton,	Ottawa	5.96
Morse J S,	Liverpool, N S	230.05
Hampton Mrs H,	Lachute	32.76
Gillis & McDonald,	Sydney	19.41
Kinsella Miss A,	Levis	41.11
Anderson Geo B & Bros,	Brampton	74.01
Houlahan Mrs M A,	Sherbrooke	21.25
Merkley Mrs,	Morrisburg	106.47
Scarff & Ferguson,	Stratford	23.66
Laidlaw John & Son,	Kingston	35.62
Choquette Mde,	St Anicet	141.74
McElray Misses,	Ottawa	230.70
Delahay R & Co,	Pembroke	45.43
Johnston A,	"	60.74
Dearden D,	Richmond	65.46
Currigan A J,	Inkerman	40.00
Williamson J D & Co,	Guelph	31.51
McLaughlan John,	Woodstock	17.50
Bailly Kate,	Bridgewater	4.60
Gobeille Mde,	Sorel	23.21
Bigelow Mrs,	Wales	25.90
Brown Mrs G H,	Moncton	377.27
Preston & Morris,	Winnipeg	23.53
Demers Mrs J,	Newcastle	61.72
Donahoe Thomas,	Quebec	41.51
Bryson Graham & Co,	Ottawa	61.13
Pigeon Pigeon & Co,	"	44.05
Silver G W,	Lunenburg	1059.35
O'Donahoe Bros,	Brockville	58.19
Fortune Miss G,	Huntingdon	17.48
Robidou Mde,	Sorel	79.86
Dechene & Gingras,	Quebec	56.88
Barlow H F,	Magog	27.62
Draper M A & E,	Sherbrooke	30.06
Graham J B,	Trenton	55.48
Leacy Wm,	Chapleau	17.06
Park Miss,	South Pinch	113.88
Pickard Wm,	Seaforth	21.16
Wickett J & T,	Port Hope	4.50
Caron P E & Frere,	Hull	100.09
Campbell & Shane,	Windsor	25.13
Craig Geo	North Gower	26.40
Spence & Crunley,	Kingston	20.00
Hazelton Mrs,	Beachberg	19.08
Burton Mrs Thomas,	Cobden	203.78
Bircker & Diebel,	Waterloo	39.45
Grant C C,	St Stephen	53.63
Petrin Mde,	St Denis	94.06
Hinch & Co,	Napanee	77.78
Nolin L H & Co,	Ottawa	767.31
Sterling Miss,	Maxville	122.31
Fredenberg,	Lancaster	14.16
Detlor J C & Co,	North Bay	6.45
Cousineau F X & Co,	Toronto	2894.87
Stanley Robertson & Co,	Brantford	17.00

No. 21. Defendant's Exhibit Number Two. Notarial Transfer of Estate to Defendant, Dated 6th November, 1891, with Defendant's Offer for Estate, Confirmation by Inspectors, Judge's Order Authorizing Transfer and List of Book Debts Attached. *continued.*

	NAME.	ADDRESS.	AMOUNT.
	McAlpine Mrs,	Halifax	36.80
	Saunders Bros,	Woodstock	53.40
	Sterling Mrs H E,	Toronto	55.57
	Banfield & McK		
	Simard F,	Quebec	690.29
	Fair F R,	Peterboro	8.60
	Salkeld J B,	Goderich	34.86
	MacGowan P A,	Moncton	11.10
	O'Brien Miss A,	Lindsay	45.16
10	Bancier Bros,	Ottawa	38.60
	Moore Miss B A,	North Sydney	76.75
	Miller J V & Co,	Brockville	120.46
	Decelles J A	West Farnham	31.31
	Griffin H S & Co,	Peterboro	44.40
	Grant Wm,	Bradford	134.23
	Sellick & Cumming,	Kemptville	1.44
	Publicover T W,	Sydney	63.72
	MacKenzie J A	"	10.20
	Field Bros ,	Cobourg	39.27
	Allan Wm,	Arnprior	170.90
	Fournier Bros,	Ottawa	7.59
	Cannon Bros,	North Sydney	11.16
20	Adams W H,	Arnprior	83.12
	Paterson Mrs J,	Lyndenhurst	3.80
	Ryan J W,	Kentville	51.02
	Smith E J,	Lucknow	.35
	Phelan J G,	Spring Hill Mines	59.23
	Aubrey Miss M L,	Three Rivers	10.33
	Riddle & McAdam,	Almonte	123.78
	Boutin J B,	Levis	77.97
	Ladouceur Miss,	St Andrews	52.95
	Switzer H,	Ottawa	105.88
	Pike Miss M,	Halifax	204.92
	Hall Innes & Co,	Peterboro	162.78
30	Gatland Mrs C H,	Shediac	43·42
	Woods & Taylor,	Galt	85.64
	Simpson Miss,	Almonte	18.37
	Ballert E R,	Guelph	15.75
	Bayley L A,	Sherbrooke	154.03
	Kedey & Co,	St John	14.47
	Stone Thomas	Chatham	17.83
	Keenleyside Bros,	Sarnia	35.23
	Ritchie Geo & Co,	Belleville	34.79
	Campbell Miss Jane,	Ottawa	19.34
	Harrington Miss M & A,	Westport	15.06
	Knapton Mrs J H,	Bedford	228.88
	Fraser J M,	Stratford	15.42
40	White John & Co,	Woodstock	21.03
	Rodden D C & Co,	West Farnham	5.54
	Delaney Miss E,	Peterboro	24.57
	Crompton Appleby & Co.,	Brantford	17.79
	Bashien Mrs,	Bedford	10.63
	Stickles C F,	Sterling	2.61
	Edwards W C & Co,	Rockland	1.50
	Adams Alexander,	Halifax	34.82
	Mickleboro J & W,	St. Thomas	8.79

RECORD.

In the Superior. Court.

No. 21. Defendant's Exhibit Number Two. Notarial Transfer of Estate to Defendant, Dated 6th November, 1891, with Defendant's Offer for Estate, Confirmation by Inspectors, Judge's Order Authorizing Transfer and List of Book Debts Attached. *continued.*

NAME.	ADDRESS.	AMOUNT.
Cuthbert Thomas,	Merrickville	64.62
Lajoie Frere,	Three Rivers	62.83
Bresse Mrs W,	Newburn	20.10
Turnbull J C,	Peterboro	44.85
Baker Miss K E,	Gananoque	92.28
Woodhouse Thomas,	Toronto	53.33
Wilson H W & Co.,	Ottawa	163.08
Cape & Young,	Vancouver	15.50
Blais & Lefebvre,	Quebec	80.82
Kerr A R & Co,	Hamilton	40.32
Poulin L A,	Ottawa	11.25
Ross C & Co,	Ottawa	33.83
Lefebvre Mde L,	Quebec	87.39
Davidson & Horan,	Quebec	51.64
Sheppard Miss L,	"	34.95
Wilson Miss M A,	St Johns	161.00
Robertson James,	St Thomas	140.09
Saisons Les Quatre,	Quebec	86.64
Eton F & Co,	Toronto	232.62
Labracque Mde J,	Quebec	739.19
Thorne S & Co,	Hamilton	152.78
Myrand & Pouliot,	Quebec	6.72
Martin Mrs O C,	Louiseville	361.07
McDougall Mrs J S,	Vankleek Hill	18.68
Loggie A. J. & Co.,	Chatham	44.89
Kavanagh B,	South Mountain	17.75
Johnston Misses E & H,	Toronto	21.96
Little A J & Co.	Guelph	43.84
Chapdelaine Miss,	Sorel	25.89
McCrimmon Miss,	Lancaster	14.60
Loggie W S,	Chatham	131.21
Thwaites T E,	Beachburg.	57.83
Donaldson Mrs,	Quebec	9.80
Brosseau & Bergeron,	St. Hyacinthe	21.54
McIntyre & Campbell,	Cornwall.	8.50
Panneton P E,	Three Rivers	32.32
Wilkinson E,	Galt	73.51
Smart Mrs. J F,	Cornwall.	16.35
Mills C & M,	Iroquois.	92.20
Carner Miss M A,	Maxville	11.89
Ryan G B & Co,	Guelph.	13.10
Smith J S & Co,	Ingersoll	38.27
Meunier S.	Chambly Basin	3.88
Doiron D J	Shediac	24.93
Mohr Miss,	Quebec	15.63
Bulger M,	Bulger	125.91
Trudeau A,	Windsor Mills	65.60
Ouellette Mrs T,	Weedon Station	33.53
Maher Fannie,	Campbellton.	75.83
Allen Miss H M,	Alexandria	90.04
Jordan Mrs J T,	Perth.	17.92
Prevancher Miss,	Papineauville	718.63
McNally Mrs,	Fredericton	68.23
Munro A G,	Morrisburg	9.05
Rowse E J,	Oskawa.	16.11
Paterson, Miss,	Windsor Mills	1.23

NAME.	ADDRESS.	AMOUNT,
Hyman S A,	Belleville	19 96
Smith Miss E M,	Annapolis	76.36
Beach Miss M,	West Winchester	71.69
McDonald D M,	Cumberland	103.58
McNamara M J,	Brockville	13.60
Black J & G,	Thurso	8.86
Gallena Mrs F	London	107.67
Brankman W D,	Hemmingford	18.24
Larmoor E & Co,	Cornwall	85.14
Ferguson W J,	Stratford	29.72
Vezina M	St Denis	46.51
Mangan & Forest	Pembroke	183.80
Carpenter F	Cornwall	126.54
Hawley M G	Sutton	20.95
Foreman, W & Co	Chatham	3.45
Conway & Co	"	57.96
Edwards F R	Thurso	165.41
Kranz C & Son	Berlin	12.46
Scott Mrs W	Westport	60.85
Alley H B B	Petrolia	36 00
Tierney John & Son	Arnprior	2.50
Waters Thomas	Ottawa	40.25
Sugarman Mrs C,	Alexandria	15.78
Deslauriers Mde	Beauharnois	1.67
Pedlow J L	Renfrew	42.55
Geldert G D	Lunenberg	17.93
Whitney C & W	"	67.29
Thompson & Pratt	Sault Ste Marie	54.67
McDougall S	Renfrew	194.04
Quinn Miss H	Halifax	66.91
Hougle L A & H	Pike River	5.13
Kerr John & Co	Douglas	10.28
McSweeney P	Moncton	73 14
Grimmer E & J	St Stephen	38.27
McLeod D N & Co	Park Hill	109.62
Sullivan D C	Moncton	18.75
Brown & Baker	Brantford	70.65
Best J E	Kentville	98.73
Ridley Miss L	South Mountain	63.86
Dodge H S	Kennyville	8.20
Brander John	Newcastle	7.50
Boright W H & Son	Mansonville	10.00
Schneider W H	Mildmay	24.54
Clark & Co	Port Perry	12.73
Vandusen H A	Tara	55.71
MacDonald & Hanrahan & Co	Sidney	148.71
Hewson & Co	Niagara Falls	3.75
Gately Miss M A	Quebec	28.70
Percival & Co	Smiths Falls	29.01
Ryan Miss J	Port Hope	48.03
Geddings Mrs T	Ottawa	31.80
Racheleau N	Bedford	9.76
Dowling Bros	St John	18.28
McArthur & McEwan	Cornwall	93.03
Casavant R	Joliette	25
Boyd Mrs E	Winchester	5.77

RECORD.

In the Superior Court.

No 21. Defendant's Exhibit Number Two. Notarial Transfer of Estate to Defendant, Dated 6th November, 1891, with Defendant's Offer for Estate, Confirmation by Inspectors, Judge's Order Authorizing Transfer and List of Book Debts Attached. *continued.*

NAME.	ADDRESS.	AMOUNT.
Harvey & Middleton	Gananoque	18.54
Gibb A	Buckingham	12.72
Murray J & A	Calais	10.27
Dufresne H	Casselman	29.76
Mailloux Mde	St. Cesaire	7.70
Martin F X	Hull	240.01
Taggart Mrs	Westport	87.85
Piche J	Joliette	123.39
Brown O	Delta	120.87
Sweet A & Co	West Winchester	23.71
Blachford George	Huntingdon	1.86
Fish Ry	Waterloo	89.82
Moore W H & Co	North Sydney	9.00
St Aubin J C & Co	Sherbrooke	17.78
Motard & Riendeau	Ottawa	29.78
Taylor & Green	Gananoque	29.64
Nesbet Mrs	Hamilton	23.93
Barnes & Murray	St John	8 03
Casselman ——	Chesterville	16.62
McDonald C M & M M	Alexandria	60.31
Babcock C M & Co	Brockville	12.19
Berkinshaw W H & Co		65.80
Chagnon Mrs A	St Anicet	5.24
Hynmen J O & Co	Berlin	3.72
Milne & Clute	Sterling	18.89
Murphy Mrs M.	Halifax	251.10
Culbertson G & B	Douglas	16.12
Gibson Mrs	Rockburn	7.18
Hennessay James	Belleville	28.68
Davis J B	Norman	144.59
Stanford W V & H	Renfrew	90 09
Renaud P F	St Francois (Bauce)	695.24
Wilson & Pye	Harrington	65.53
Sutherland Miss	Toronto	22.52
Houmeil & Baker	Brockville.	373.33
McKercher Thomas	Kars	94.08
Richmond Orr & Co	Kingston	12.93
Gonlette Miss	Gananoque	34.94
Lacrois Mrs E A	Three Rivers	294.75
Dessault & Co	Quebec	168.95
Logan M S	Morrisburg	21.13
Cornwall & Jones	Hamilton	13.00
Larocque Mde	Valleyfield	92.89
MacDonald J.	Meaford	9.60
Shaw M	Hartland	5.85
Dulmage & Sawyer	Wallaceburg	6.30
Ray Mde A	St Lin	138.24
Fournier Jos	Lachine	14.24
Wilkinson Miss A J	Goderich	12.00
Kanan Miss E	St John	14.17
Devey Miss C.	Halifax	28.75
Ogilvy Chas	Ottawa	78.81
Lariviere Miss	St Hyacinthe	30.12
Kerr Bros	Frans Point.	6.91
Desilep Miss L	St Wencelas	33.57
Mathewson, Townsend & Co	Sydney	52.57

	NAME.	ADDRESS.	AMOUNT.
	McNulty E	Iroquois	157.82
	Storey J K	St John	1.30
	Deguire G	St Justin (de Newton)	7.85
	George J E & Co	Inverness	46.81
	Bernard C	St Bazile le Grand	6.62
	Bedall A N	Hemmingford	92.99
	Bow G R	West Winchester	34.71
	Janson R	West Port	74.47
	Geddes Bros	Strathroy	156.93
10	Stockwell J C	Danville	23.80
	Poirier E L	Fraserville	61.03
	Dobson V N	Hillsboro	1.63
	Munro T V	Robinson	4.50
	Charbonneau J	St. Therese	17.22
	Lambert G	St Julienne	10.99
	Inksater J R	Paris	8.01
	Lapointe J	St Jerome	18.74
	Devitt M & Co	Waterloo	19.96
	Lanouette F & E	St Anne (de la Pérade)	21.62
	Dion E	Valleyfield	16.39
	Casselman Lumber Co.	Casselman	42.58
20	Hazard Miss	Toronto	14.43
	Mason J J	Bowmanville	35.35
	McDiarmid R & Co	Carleton Place	4.21
	McManun Bros	Woodstock	12.00
	Algar John E	St Stephen	7.10
	McNally Bros.	Westport	13.57
	Etter & Bugsley	Amherst	14.73
	McDonald J B	Charlottetown	44.87
	McViverin Misses	Picton	115.57
	Andrew Miss	Winnipeg	9.88
	Cassady Mrs M	Hastings	10.86
	Murray & Tuffey	Cobdon	211.19
	Shea Jas	Hamilton	41.53
30	Brown M	Kincardine	28.79
	Montgomery Mrs E	Cookshire	8.09
	Hudon A J	Richmond	22.50
	McHaughton A	Huntingdon	7.58
	Bourgeois P	Napierville	35.95
	Lazure L P	St Remi	94.52
	Lamarre C	"	21.71
	Dugal & Co	Bassin du Lievre	18.76
	Hackett M M	Cornwall	50.17
	Maher F	St Guillaume	100.20
	Nooman M F	Chatham	10.60
	Graham E	Ottawa	28.33
40	McCreery S J	Glencoe	20.00
	Crabbe Mrs	Ottawa	65 54
	Doelle J W & Co	Chatham	23.05
	Jamieson R	Seaforth	62.78
	Lessieur M	Yamachiche	13.91
	Levine & Co	Fox River	39.58
	Simpson R	Toronto	18.00
	Ruttan & Co	Manitou	29.09
	Lallier P E,	St Jerome	14.12
	Nolin T,	Ottawa	22.36

RECORD.

In the Superior Court.

No. 21. Defendant's Exhibit Number Two. Notarial Transfer of Estate to Defendant, Dated 6th November, 1891, with Defendant's Offer for Estate, Confirmation by Inspectors, Judge's Order Authorizing Transfer and List of Book Debts Attached. *continued.*

NAME.	ADDRESS.	AMOUNT.
Pare J A,	Lachine	49.11
Henderson Miss,	Winchester	104.85
Perkins Mrs,	Morrisburg	8.12
Duguay J N,	L'Abaie	109.49
Long G & Co,	Winnipeg	117.00
Featherston A,	Arnprior	8.00
McMillan Jos,	Sydney	23.38
Bourgeois Miss & Co,	Moncton	10.68
Corbett J F,	Halifax	5.81
McDonald M A	Alexandria	5.84
Silvar Miss E,	Waterville	8.34
Nagle Mrs,	Three Rivers	5.33
Lapierre Mrs	St, Hyacinthe	5.00
McCamm Miss,	Cardinal	8.13
Clark, Maitland & Co,	Smith's Falls	911.34
Smith & Bryson,	Trenton	8.28
Smith Miss M L,	North Bay	10.15
Caie J T,	Richibucto	6.66
Draper George,	Listowel	9.58
Corbett Mrs,	Milltown	10.00
McDonald R A	Lachute	32.89
Douglass Mrs J,	Amherst	5.00
Clarke, Robler & Co,	Summerside	10.00
Wilson & Co,	Almonte	18.39
McDonald D A,	Port Hawkesbury	14.00
O'Rielly E & Co,	Brockville	5.00
Williams Miss A E,	Fredericton	5.00
Lamothe Miss,	Three Rivers	5.00
Harrington D,	Westport	5.00
Ross Mrs L,	Stellerton	5.00
Kepin A S,	Freyleighberg	5.00
Perrigard W M,	South Durham	5.00
Guillette F A,	Sudbury Junction	.80
Gatliff D & Co,	Manchester	34.40
Dathein L & Co,	Berlin	29.75
Cantlie J A & Co,	Montreal	3.00
Cresswell Thomas & Co,	Montreal	14.23
Wolfenden J & Co,	Montreal	2.45
Cussack John,	"	5.00
Wilson C J,	"	925.84
Maynard W,	"	258.02
Harper D G,	"	31.64
Malo J O,	"	12.25
McCall Wm. J P,	"	7.96
McLean Wm.,	"	2336.98
American Felt Hat Co.,	"	7.15
Ross D A,	"	1.00
		$49,512.98

IN THE MATTER OE JOHN MACLEAN & CO., MONTREAL.

LIST OF BILLS RECEIVABLE ON HAND 30TH JUNE, 1891.

NAME	PLACE.	DUE DATE.	AMOUNT.
Wright Mrs. A.,	St. Catherines....	Sept. 4	62.66
Lamarre C,	St. Remi.....	" 4	44.27
Blanchard Mrs Lo,	Mansonville.....	" 16	61.22
Croyl & McCullough,	Wales.....	Oct. 4	44.32
Stevenson Mrs. T C,	St. Stephen.....	" 4	114.01
Stewart Robt,	St. Chrysostome.	Nov. 4	25.14
Les Quatre Saisons,	Quebec.....	" 4	224.18
Les Quatre Saisons,	"	" 4	75.13
Lizotte P E (End Ed Lizotte),	Sorel.....	" 15	23.94
Morris Geo,	Montreal.....	" 20	39.33
John Row, (End D McCall & Co,)	Montreal.....	Dec. 4	59.37
Paisley & Morton, (End Wm. Denoon)	Brandon.....	" 4	34.33
Clarke Thomas, (End Ed. Clarke),	Pembroke.....	" 5	75.08
Quibell W A,	Saulte Ste. Marie	" 15	158.15
Morris Geo,	Montreal	" 20	39.33
Morris Geo,	"	Jan.'92 20	39.33
Roy Jos, (End E Delauney)	"	Feb. 13	409.88
Quibell W A,..	Saulte Ste. Marie	" 13	119.79
Levi R (End P McGinnis), ...	St. Johns.....	" 16	52.50
Row John,	Montreal.....	March 4	39.58
Paisley & Morton, (End Wm. Denoon),	Brandon.....	" 4	34.33
Lizotte P E (End E Lizotte),	Sorel.....	July 15	23.93
Wright R & Co,	Brockville.....	" 18	65.02
			$1865.46

No. 21.
Defendant's Exhibit Number Two.
Notarial Transfer of Estate to Defendant, Dated 6th November, 1891, with Defendant's Offer for Estate, Confirmation by Inspectors, Judge's Order Authorizing Transfer and List of Book Debts Attached.
continued.

This is the list of book debts referred to in the deed of conveyance from Alexander F. Riddell to John MacLean, executed before the undersigned Notary this sixth day of November, 1891, and thereto annexed.

In test veritatis.

Signed, ALEX F. RIDDELL,
JOHN MACLEAN,
W. de M. MARLER, N.P.

A true copy. W. de M. MARLER.

TRANS-ATLANTIC CABLEGRAM.

London, 10th August, 1891.

To Genda, Montreal:

Making offer to-morrow on my own account to purchase assets guaranteeing last payment; cable whether you will offer or not; inspectors meet at noon.

I certify this to be a true copy of the telegram forwarded from London August 10th, 1891.

T. MACMANUS,
Charing Cross Hotel.

The Commercial Cable Company Clearing House, London, 25th May, 1892.

No. 22.
Defendant's Exhibit A 1 at Enquete.
Cablegram from Defendant to Plaintiff, Dated 10th August, 1891.

RECORD.

In the Superior Court.

No. 23. Defendant's Exhibit A 2 at Enquete. Cablegram from Plaintiff to Defendant, Dated 16th June, 1891.

TRANS-ATLANTIC CABLEGRAM.

June 16th, 1891.

From Montreal to Genda, London :

Have decided to liquidate; advise all friends on your side and return quickly.

No. 24. Defendant's Exhibit A 3 at Enquete. Statement of Capital Accounts of John MacLean, Alexander Stewart and James H. Smith, made by Mr. Riddell, Curator of Estate.

In the matter of

JOHN MACLEAN & CO.

STATEMENT OF JOHN MACLEAN'S CAPITAL ACCOUNT FROM 30TH JUNE, 1884, TO 31ST DEC., 1886.

Date.	Particulars.	Dr.	Cr.	Cr. Balance.
1884.				
June 30	By Balance		$45808 62	
1885.				
July 11	" Interest (8 p.c.)		3624 66	
	" Profit and Loss		4816 38	
	To Private Acc. (Drawings)	$5753 93		$48495 73
1886.				
July 10	By Interest (8 p.c.)		3879 64	
	To Profit and Loss	4427 04		
	" Private Acount	5770 67		42177 66
Dec. 31	By Interest (8 p.c.)		1687 08	
	To Private Account	2911 44		
	" John Heath	4407 38		
	" Plant Account	1334 03		
	" Contingent Account	7000 00		
	" Profit and Loss	23730 98		4480 91
	" Balance	4480 91		
		$59816 38	$59816 38	
1886,				
Dec. 31	By Balance		Cr. 4480 91	

In the matter of

JOHN MACLEAN & Co.

STATEMENT OF JOHN MACLEAN'S CAPITAL ACCOUNT FROM 1ST JANUARY, 1887, TO 30TH JUNE, 1891.

Date	Particulars	Dr.	Cr.	Balance
1887.				
Jan. 1	By Balance		$4480 91	
Dec. 31	" Interest (7 p.c)		313 64	
"	To Private Account	$5194 86		
			Cr.	
"	By Profit and Loss		8861 13	$8460 82
1888.				
"	" Interest (7 p.c.)		592 24	
"	To Private Account	6070 56		
			Dr.	
"	" Profit and Loss	6072 13		3089 63
1889.				
Dec. "	" Interest (7 p.c.)	216 30		
"	" Private Account	5540 83		
			Dr.	
"	" Profit and Loss	2183 23		11029 99
1890.				
"	" Interest (7 p.c.)	772 10		
"	" Private Account	4429 14		
			Dr.	
"	" Profit and Loss	2377 03		18608 26
1891.				
June 30 "	Interest (7 p.c.)	651 28		
"	" Private Account	1979 72		
			Dr.	
"	" Profit and Loss	7840 05		29079 31
"	By Balance		29079 31	
		43327 23	43327 23	
1891.			Dr.	
June 30	To Balance			29079 31

RECORD.

In the Superior Court.

No. 24.
Defendant's Exhibit A 3 at Enquete.
Statement of Capital Accounts of John MacLean, Alexander Stewart and James H. Smith, made by Mr. Riddell, Curator of Estate *continued.*

In the matter of
JOHN MACLEAN & Co.,

STATEMENT OF ALEX STEWART'S CAPITAL ACCOUNT, FROM 1st JANUARY, 1887 TO 30th JUNE, 1891.

Date.		Particulars.	Dr.	Cr.	Cr. Balance.
1887					
Jan.	1	By balance from dep. acct. cash 1 Nov., 1896, $25,000.00, 2 m. int. at 7 p.c., 292.47		$25292 47	$25292 47
Dec.	31	2 m. Interest (7 p.c.)		1770 46	
	"	" Profit and Loss		4430 56	
	"	To Private Account	$2141 91		29351 58
1888					
Dec.	"	By Interest (7 p.c.)		2054 60	
	"	To Profit and Loss	3036 07		
	"	" Private Account	2311 59		26058 52
1889					
Dec.	"	By Interest (7 p.c.)		1824 08	
	"	To Profit and Loss	1091 62		
	"	" Private Account	2706 72		24084 26
1890					
Dec.	"	By Interest (7 p.c.)		1685 88	
	"	To Profit and Loss	1188 52		
	"	" Private Account	2817 13		21764 49
1891					
June	30	By Interest (7 p.c.)		761 75	
	"	To Profit and Loss	3920 03		
	"	" Private Account	1420 49		
	"	" Balance	17185 72		
			37819 80	37819 80	
1891					
June	30	By Balance			Cr. 17185 72

No. 24. Defendant's Exhibit A 3 at Enquete. Statement of Capital Accounts of John MacLean, Alexander Stewart and James H. Smith, made by Mr. Riddell, Curator of Estate. *continued.*

In the matter of

JOHN MACLEAN & CO.

JAMES H. SMITH'S CAPITAL ACCOUNT FROM 1ST JAN., 1887, TO 30TH JUNE, 1891:

Date	Particulars	Dr.	Cr.	Cr. Balance
1887				
Jan. 1	By Balance from Dep. Acct.			
	Cash 1 Nov., 1886	$30000 00		
	Int. 2 m. at 7 p.c.	350 96		
			$30350 96	30350 96
Dec. 31	By Interest (7 p.c.)		2124 54	
" "	Profit and Loss		4430 56	36906 06
1888				
Dec. "	" Interest (7 p.c.)		2583 42	
"	To Profit and Loss	$3036 07		
" "	Private Account	1144 92		35308 49
1889				
Dec. "	" By Interest (7 p.c.)		2471 58	
"	To Profit and Loss	1091 61		
" "	Private Account	2604 49		34083 97
1890				
Dec. "	By Interest (7 p.c.)		2385 88	
"	To Profit and Loss	1188 51		
" "	Private Account	4491 56		30789 78
1891				
June 30	By Interest (7 p.c.)		1077 62	
"	To Profit and Loss	3920 02		
" "	Private Account	567 84		27379 54
" "	Balance	27379 54		
		$45424 56	$45424 56	
1891				
June 30	By Balance			Cr. $27379 54

RECORD.

In the Superior Court.

Province of Quebec, District of Montreal. } In the Superior Court for the Province of Quebec.

No. 153.

On the eleventh day of August, one thousand eight hundred and ninety-one.

Present—The Honorable Mr. Justice DE LORIMIER.

No. 25. Defendant's Exhibit A 5 at Enquete. Copy of Order Appointing Curator and Inspectors to Estate, Dated 11th August, 1891.

In the matter of John MacLean, Alexander Stewart and James H. Smith, all of the city and district of Montreal, merchants and co-partners, and there carrying on business together as such under the firm name of John MacLean & Co.

Insolvents,

and

The Merchants Bank of Canada,

Petitioner.

I, the undersigned, one of the Judges of the said Superior court ;

Seeing that the creditors of the said insolvents have been duly convened in order to give their advice touching the appointment of a curator to the property of the said insolvents and on such other matters as could lawfully be submitted to them ;

Having taken their advice thereon and heard the said petitioner on his motion,

Do hereby appoint as curator to the said property Alexander F. Riddell of the said city of Montreal, accountant and as inspectors thereof John S. Meredith, banker, Joseph Hardisty, accountant, both of Montreal and Reuben Millichamp of Toronto, manufacturers agent.

(Signed,) CHS. C. DE LORIMIER,
J. S. C.

True copy.
A. E. DUMESNIL,
D. P. C. S.

No. 26. Defendant's Exhibit A 6 at Enquete. Petition of Curator to be Authorized to Accept Composition and Transfer the Estate of the Insolvents to Defendant, Dated 13th October, 1891.

Province of Quebec, District of Montreal. } Superior Court.

In the matter of

John MacLean & Co.,
and
Alexander F. Riddell,

Insolvent.

Curator.

To the Superior Court, sitting in and for the district of Montreal, or to any one of the Honorable Judges thereof.

The Petition of Alexander F. Riddell, of the City of Montreal, the above mentioned curator ;

Humbly Sheweth :

RECORD.

In the Superior. Court.

No. 26. Defendant's Exhibit A 6 at Enquete. Petition of Curator to be Authorized to Accept Composition and Transfer the Estate of the Insolvents to Defendant. Dated 13th October, 1891. *continued.*

That John MacLean, of the said firm of John MacLean & Co., insolvents, has made an offer of composition which has been accepted by his creditors, upon the following terms and conditions:

To pay all privileged and secured claims and expenses in insolvency in full in cash and a composition upon the ordinary liabilities at the rate of fifty cents on the dollar to Canadian and American creditors, and ten shillings in the pound to the European creditors, payable by his promissory notes dated first September, one thousand eight hundred and ninety-one, in three instalments as follows:—(1) notes at four months after said date for fifteen cents on the dollar or three shillings in the pound, (2) notes at eight months after said date for fifteen cents on the dollar or three shillings in the pound, and (3) notes at twelve months from said date for twenty cents on the dollar or four shillings in the pound, the said last mentioned notes (at twelve months) to be secured by the endorsement of Mr. A. F. Gault, of the City of Montreal, merchant, the whole on condition that the assets and estate generally of the said John MacLean & Co., be transferred to him, the said John MacLean individually, and that a discharge be granted by the creditors to the said John MacLean, Alexander Stewart and James Smith, the former members of the said firm of John MacLean & Co.

That the said A. F. Gault has agreed to endorse the said John MacLean's promissory notes at twenty cents on the dollar or four shillings in the pound for the third instalments of the aforesaid composition.

That the said John MacLean, in consideration of the creditors of the said insolvents waiving security on the first and second instalments of the said composition, has agreed by letter of the seventh of October instant to hold the assets of the estate so to be transferred to him intact for the benefit of the said creditors and has thereby undertaken to place no lien upon the assets so to be transferred to him until the said first and second payments of the said composition are satisfied.

That by resolution of the said seventh day of October instant, the inspectors of the estate of the said John MacLean & Co., confirmed the acceptance by the creditors of the said settlement, and authorized and instructed your Petitioner to apply for an order of Court to transfer the assets and estate generally of the said firm to the said John MacLean, on your Petitioner receiving from him the composition notes and cash necessary to carry out the said composition.

Wherefore, your Petitioner prays that an order of this court do issue, authorizing him to accept the said composition, and upon receiving from the said John MacLean the composition notes and cash necessary to carry out the same, to transfer the assets and estate generally of the said firm to the said John MacLean.

And your Petitioner will ever pray.

Montreal, October 13th, 1891.

(Signed,) ABBOTS, CAMPBELL & MEREDITH,
Attorneys for Petitioner.

True copy.

H. COLLARD,
D. P. S. C.

RECORD.

In the Superior Court.

No. 27. Judgment of the Superior Court rendered 13th May, 1893—

Le 13 Mai 1893.

Présent : L'Honorable M. le Juge Jetté.

La Cour, après avoir entendu la plaidoirie contradictoire des avocats des parties sur le fond du procès mû entre elles, pris connaissance de leurs écritures pour l'instruction de la cause, examiné leurs pièces et productions respectives, entendu et dûment considéré la preuve et délibéré :

Attendu que par acte notarié du 31 décembre 1886, les parties ont déclaré : qu'elles formaient entre elles, pour le terme de cinq ans, à compter du 1er janvier 1887, une société commerciale dont la raison sociale serait John MacLean & Co., que le capital de cette société serait fourni comme suit : que MacLean y apporterait la somme qui se trouvait alors à son crédit dans les livres d'une société du même nom, dissoute le même jour, et que Stewart et Smith y verseraient les sommes par eux déposés dans la caisse de la dite ancienne société et qui se trouvaient alors au crédit de chacun d'eux respectivement dans les livres d'icelles ; que les dites sommes porteraient intérêt à sept pour cent en faveur de chaque associé ; que la part de chacun dans les bénéfices et les pertes serait de moitié pour MacLean et de quart pour Stewart et Smith respectivement ; qu'au cas de retraite ou de décès d'un associé, avant le terme de la société, sa part serait de la somme portée à son crédit dans la feuille de balance, signée et reconnue exacte le 31 décembre précédent, et que le capital alors inscrit au crédit de tel associé lui serait remboursé dans le cours de trois années ; enfin que les dits associés pourraient prendre annuellement dans la caisse sociale, les sommes suivantes : MacLean $6,000.00, Stewart $3,000.00, et Smith $3,000.00.

Attendu que la vérification des affaires de l'ancienne société a ensuite établi que le montant au Mrédit de MacLean était de $4,489.91 ; celui au crédit de Stewart de $25,292.47, et celui au crédit de Smith de $30,350.96, et qu'en conséquence le capital de la dite société s'est trouvé fixé au chiffre de $60,124.34, mais que néanmoins chacune des dites sommes n'étaient ainsi mises dans la société que pour la jouissance et non pour la propriété, puisque chaque associé devait percevoir l'intérêt de celle par lui versée et qu'il devait la reprendre en cas de retraite ou de dissolution anticipée ;

Attendu qu'il est établi en preuve :

Que la société ainsi formée a ensuite fait commerce pendant environ quatre ans et demi, et que le 22 juillet 1891, elle a été forcée de faire cession de ses biens à ses créanciers ;

Que bien qu'il fut représenté, dans l'état d'affaires préparé pour les créanciers, que la dite société avait alors un surplus de $15,369.68, il est néanmoins prouvé qu'elle était alors absolument insolvable et que ce surplus n'existait pas en réalité ; que par suite le capital d'icelle était complètement absorbé et perdu ;

Qu'enfin les créanciers ont ensuite consenti à faire rétrocession de tout l'actif de la dite société à MacLean, en considération d'un paiement de cinquante centins par piastre, sur le chiffre de leurs créances, et qu'ils ont en même temps donné décharge finale aux trois associés ;

Attendu que le demandeur Stewart se pourvoit, dans ces circonstances, contre MacLean, allégant que pendant l'existence de la dite société, MacLean a prélevé sur le fonds capital d'icelle, d'abord ce qu'il y avait mis lui-même,

puis une autre somme de $29,079.31, prise sur le capital de ses co-associés, ainsi que le constate le compte de capital dans les livres de la dite société, et qu'en conséquence il est responsable envers ses dits associés du montant pour lequel ces prélèvements excèdent sa mise dans la proportion du capital de chacun, ce qui forme pour le demandeur une somme de $11,213.20 que ce dernier réclame.

Attendu que le défendeur plaide en substance :—

1. Qu'il a payé aux créanciers, à l'acquit de John MacLean & Co., des sommes considérables, savoir, plus de $100,000.00 ; que ce paiement a été fait au profit du demandeur pour une somme beaucoup plus forte que celle réclamée dans l'espèce ; qu'à raison de ce paiement, le défendeur a obtenu la décharge du demandeur et qu'il a été subrogé aux droits des créanciers contre lui pour autant, et qu'il est fondé en conséquence à compenser la somme réclamée par celle qu'il a ainsi payé.

2. Que les sommes tirées par le défendeur de la caisse sociale l'ont été régulièrement en vertu des stipulations du contrat de société, et que c'est erronément que le demandeur, qui tenait les livres, a chargé ces sommes au compte du capital, tandis qu'elles auraient dû être portées en compte courant ;

Que d'ailleurs elles ne constituaient une dette qu'envers la société et non envers les associés eux-mêmes, et que lors de la rétrocession cette créance a été abandonnée au défendeur, avec le reste de l'actif, en sorte qu'elle s'est trouvée éteinte par la confusion résultant de la réunion, en la personne du défendeur, des qualités de débiteur et de cessionnaire des créanciers :

Quant au moyen de la compensation :—

Attendu que bien qu'il soit établi que le défendeur a payé aux créanciers de John MacLean & Co., cinquante centins dans la piastre et que moyennant ce paiement il a obtenu la rétrocession de la masse des biens et des droits de la société, il n'est cependant pas prouvé qu'une proportion quelconque de ce paiement puisse être considérée comme ayant été exigée et donnée pour l'obtention de la décharge susdite, et qu'au contraire il paraît établi que cette somme était la valeur réelle de la masse des biens et droits rétrocédés, irrespectivement de la décharge susmentionnée, et qu'en conséquence il n'y a lieu d'accueillir la compensation invoquée :

Sur le moyen de la confusion :—

Attendu que bien qu'il résulte de l'acte de société et de la preuve, que le demandeur avait droit de prendre les sommes qu'il a retirée de la société, et que les deux autres associés ont retiré des sommes correspondantes, néanmoins il est aussi établi que ces sommes ont été entrées dans les livres de la société au compte du capital ; que ces entrées ont été faites à la connaissance du défendeur et peuvent être invoquées contre lui ; que d'ailleurs elles paraissent implicitement justifiées par l'acte de société ;

Attendu, en outre, que lors même que ces sommes auraient été portées en compte courant, ce qui eût été le mode régulier, elles n'auraient pas constitué dans les mains des créanciers un droit spécial et distinct contre MacLean, pouvant donner lieu à une rétrocession extinctive des droits personnels et réciproques des associés entre eux, découlant des stipulations de l'acte de société au sujet de la répartition des pertes ; que ces entrées n'étaient destinées qu'à constater l'état de situation de MacLean vis-à-vis de ses co-associés, et que c'est

RECORD.

In the Superior Court.

No. 27. Judgment of the Superior Court rendered 13th May, 1893— *continued.*

à ce point de vue seulement qu'elles peuvent être justement appréciées ; qu'en conséquence les créanciers n'ont pu rétrocéder à MacLean un droit qui ne les concernait pas, et que par suite la confusion n'a pu se produire ;

Attendu, enfin, qu'ainsi qu'il a été ci-dessus établi, les associés dans l'espèce ont créé pour leurs opérations un fonds social de $60,124.34 ; que la cession de biens a complètement absorbé ce capital, qui se trouve en conséquence transformé en une perte totale ; que les pertes devaient être supportées par les associés dans la proportion d'une moitié pour le défendeur et d'un quart pour chacun des deux autres ; la part du défendeur dans cette perte se trouve de $30,062.17, tandis que celle du demandeur n'est que de $15,031.08½, et celle de Smith, du même chiffre ; que ce capital ayant été réalisé au moyen de sommes versées à titre d'avances par les associés et dans des proportions inégales, il convient d'égaliser maintenant cette contribution, afin d'équilibrer la perte entre eux ; qu'en conséquence le demandeur ayant fourni au fonds social $25,292.47, et sa part de perte ne devait être que de $15,031.08½, il se trouve avoir payé $10,261.38½ de plus qu'il ne doit supporter ; que Smith ayant versé $30,350.96, il se trouve avoir payé $15,319.87½ de plus qu'il ne devait supporter, tandis que le défendeur devait supporter la perte dans la proportion d'une moitié, savoir $30,062.17, et n'ayant fourni au fonds social que $4,480.91, il se trouve tenu de faire bon à ses ex-associés du surplus, savoir, de vingt-cinq mille cinq cent quatre-vingt-une piastres et vingt-six centins ($25,581.26), dont dix mille deux cent soixante et une piastres et huit centins et demi ($10,261.08½) au demandeur, comme susdit, et quinze mille trois cent dix-neuf piastres et quatre-vingt-sept centins et demi ($15,319.87½) à Smith ;

Attendu que le but de la réclamation du demandeur est virtuellement d'obtenir, au sujet de la perte du capital-social, le rétablissement de la proportionnalité stipulée dans l'acte de société, et qu'en conséquence la demande est fondée pour cette dite somme de $10,261.08½.

Renvoie les Exceptions et Défenses du défendeur et le condamne à payer au demandeur la dite somme de $10,261.08½, avec intérêt du 2 mai 1892, date de l'assignation, et les dépens distraits à Maîtres MacMaster et McGibbon, avocats et procureurs du demandeur.

Canada. } Court of Queen's Bench.
Province of Quebec. } (Appeal Side.)

No. 43.

Montreal, Saturday, the twenty-ninth day of September, eighteen hundred and ninety-four.

Present:

The Hon. Sir A. LACOSTE, Knight Chief Justice.
Mr. Justice BABY.
" " BOSSÉ.
" " BLANCHET, and
" " HALL.

In a certain cause between Alexander Stewart, of the City of Montreal, merchant,

(Plaintiff in the Court below),

and

John MacLean, of the same place, merchant,

(Defendant in the Court below),

and

James H. Smith, also of the same place, merchant,

(Mis en cause in the Court below).

and

The said John MacLean, Appellant,

and

The said Alexander Stewart, - - - Respondent,

and

The said James H. Smith, - - - Mis en cause,

The Court of Our Lady the Queen, now here, having heard the Appellant and Respondent by their counsel respectively, examined as well the record and proceedings had in the Court below, and mature deliberation on the whole being had:—

Considering that there is no error in the judgment appealed from, to wit: the judgment rendered by the Superior Court for Lower Canada, sitting at Montreal, in the District of Montreal, on the 13th day of May, one thousand eight hundred and ninety-three, doth affirm the same with costs to the Respondent against the Appellant.

And the Court on motion of Messrs. Macmaster & MacLennan, attorneys for Respondent, doth grant them distraction of costs.

RECORD.

In the Court of Queen's Bench.

No. 29.
Judge's Reasons.
Chief Justice Lacoste.

L'intimé Stewart réclame de MacLean, l'appelant, son associé, une partie de sa mise dans la société John MacLean & Co.

Le 31 décembre 1886, MacLean, Stewart et Smith ont formé une société pour cinq ans, à compter du 1er janvier 1887. MacLean devait mettre dans la société ce qui lui revenait de l'ancienne maison John MacLean & Co. dont il faisait partie, et les deux autres, le dépôt que chacun d'eux avait dans cette même maison.

La mise de MacLean a été établie à	$ 4,480.91
Celle de Stewart, à	25,292 47
Celle de Smith, à	30,350.96
	$60,124.34

La société a été dissoute le 22 juillet 1891, avant l'expiration de la durée convenue, par une cession de biens judiciaire que les associés ont faite à la demande de leurs créanciers.

Bien que le bilan préparé par les associés montrât un excédant d'à peu près $15,000, il est cependant reconnu que la société était complètement insolvable.

MacLean offrit, à la connaissance de ses associés, une composition de 50 cts. dans la piastre pour les créanciers chirographaires et le paiement intégral des créances privilégiées, à la condition que les biens lui seraient rétrocédés (à lui personnellement) et que ses associés auraient une décharge. Son offre fut acceptée et la retrocession fut effectuée.

L'intimé prétend que la cession de biens et la composition effectuée par l'appelant n'ont pas détruit les droits et obligations des associés entre eux, et que ce dernier lui doit compte d'une partie de sa mise dont la jouissance seule avait été laissée à la société.

Pour arriver à déterminer le montant que lui redoit l'appelant, l'intimé s'appuie sur les comptes personnels des associés, pris dans les livres de la société, lesquels constatent :

Au crédit de Stewart	$17,185.82
Au crédit de Smith	27,379.54
Et au débit de MacLean	$29,079.31.

Suivant l'intimé, MacLean se trouverait avoir prélevé cette dernière somme sur la mise de ses associés et il leur en devrait compte, dans la proportion de la balance portée à leur crédit respectif, ce qui donnerait à l'intimé une somme de $11,213.20 qui forme le montant de son action.

L'appelant a plaidé confusion et compensation.

Il prétend que tout montant qu'il aurait retiré de la société et dont il pourrait être comptable serait une dette due à la société, par conséquent une créance de cette dernière qu'elle aurait cédée à ses créanciers, lesquels l'auraient à leur tour retrocédée à l'appelant et qu'ainsi l'appelant serait devenu son propre créancier, ce qui aurait produit une extinction de la dette "par confusion."

L'appelant offre, en compensation du montant qu'il peut devoir, la composition qu'il a payée aux créanciers et le paiement des créances privilégiées de la société.

En outre, il nie qu'il soit débiteur. L'acte de la société l'autorisait à reti-

rer $6,000 et chacun de ses associés $3,000, et il prétend n'avoir pas retiré plus que sa part.

Le savant juge de la Cour de l'Instance a renvoyé les plaidoyers de l'appelant et a accordé jugement à l'intimé pour $10,261.08½ en remboursement de partie de sa mise.

Les motifs du jugement ne sont pas ceux de l'action. L'appelant n'est pas reconnu comptable de la somme de $29,079.31, mais il est condamné à rembourser à l'intimé une partie de son capital, en vertu de la clause de l'acte de société qui l'oblige à acquitter la moitié des dettes.

D'après le jugement, le fond social qui était de $60,124.34 ayant été absorbé par la cession de biens, serait devenue une perte totale qui devait être supportée par les associés dans la proportion d'une moitié par l'appelant et d'un quart pour chacun des associés, faisant :

Pour MacLean		$30,062.17
Pour Stewart		15,031.08½
Pour Smith		15,031.08½
	Total	$60,124.34
Stewart ayant fourni	$25,292.57	
A déduire sa part dans la perte	15,031.08½	
Balance en sa faveur		$10,261.38½
Smith ayant fourni	$30 350.96	
A déduire sa part des pertes	15,031.08½	
Balance en sa faveur		$15,319.87½
MacLean, sa part des dettes	$30,062.17	
Son capital	4,480.91	
Balance contre lui		$25,581.26
Montant revenant à Stewart	$10,261.38½	
Montant revenant à Smith	15,319.87½	
	Total	$25,581.26

Avant d'examiner le mérite de l'action, il importe de décider une question importante se rapportant au droit d'action de l'intimé.

La cession a-t-elle enlevé aux associés les recours qu'ils pouvaient exercer réciproquement, en règlement des affaires de la société qui a existé entre eux ?

L'appelant prétend que oui. Suivant lui, la cession de biens judiciaire aurait transmis au curateur, non seulement les biens et les droits et actions de la société John MacLean & Co., mais aussi les biens personnels des membres de la société ; d'où il résulterait que l'intimé aurait perdu tout recours contre ses associés.

Je crois que la proposition de l'appelant est vraie en principe, que la cession de biens judiciaire d'une société comprend non seulement les biens de la société, mais aussi ceux des associés, et que cette transmission se fait par la seule opération de la loi. Reid & Bisset, 15 Q. L. R., p. 108. C. P. C, 772. C'est là une conséquence de l'obligation personnelle et solidaire que contracte chaque associé vis-à-vis des créanciers de la société. C'est sur ce principe que sont basés les arrêts de la Cour de Rennes, cités par l'appelant (Sirey, 1808-2-

354. Sirey, 1809-2-47), lesquels ont nié à un associé son recours contre ses co-associés après la mise en banqueroute de la société.

Mais, dans l'espèce, il y a eu composition et décharge, c'est-à-dire que les créanciers ont libéré les membres de la société moyennant une composition que MacLean, l'un d'eux, s'est obligé à payer. Dès lors les associés ont repris l'exercice de leurs droits personnels que la cession leur avait enlevé. L'appelant a prétendu que ces droits étaient inclus dans la cession que le curateur lui a consentie en considération du paiement de la composition. Mais l'acte d'offre de l'appelant et l'acte de cession du curateur à l'appelant établissent le contraire. Peut-être les parties ne se sont-elles pas rendues un compte exact de leur position, mais il faut bien prendre leurs écrits comme l'expression de leur volonté. L'appelant a offert une composition aux créanciers de la société en considération du transport qui lui serait fait des biens de la société. Je ne crois pas que son intention fut d'assumer les pertes personnelles de ses associés, ni d'acquérir leurs biens.

Les associés, ayant repris l'exercice de leurs droits personnels, pouvaient se demander réciproquement un règlement des affaires de la société. La Cour de Cassation (Dalloz 1869-1-467) a décidé que les membres d'une société qui ont obtenu leur libération en abandonnant aux créanciers de la société l'actif social, peuvent exercer leur recours personnels réciproques en règlement de leurs réclamations comme ci-devant sociétaires.

Revenant maintenant au mérite de l'action, il nous faut examiner la valeur des plaidoyers produits par l'appelant. Il prétend que la dette réclamée par l'intimé, en supposant qu'elle existât, a été éteinte par la confusion.

L'action de ce dernier est basée, comme je l'ai dit, sur un état de compte pris dans les livres de la société, qui établit que l'appelant est débiteur d'une somme de $29,079.31. L'appelant soumet que cette dette était due à la société et qu'elle a été cédée au curateur, qui la lui a transportée en considération de sa composition ; je ne crois pas que l'appelant fut redevable à la société du montant qu'il a perçu. La société ne pouvait rien réclamer de l'appelant, puisque par une des clauses de l'acte des conventions sociales, il était autorisé à retirer $6,000 par année et qu'il n'a pas dépassé ce montant. Mais lors de la dissolution de la société, chaque associé doit compte à ses co-associés de ce qu'il a reçu de la société, afin qu'un partage équitable et conforme à la loi et aux conventions sociales soit effectué, et c'est là la nature de la demande de l'intimé. C'est donc à tort que l'appelant a plaidé extinction de la dette par la confusion.

Le plaidoyer de compensation ne me paraît pas mieux fondé. L'appelant offre en compensation le montant de la composition, et il invoque la subrogation à son profit dans les droits des créanciers de la société dont il a acquitté les créances. Il n'y a pas eu subrogation. L'appelant a reçu valeur pour le montant de sa composition, puisqu'il s'est fait retrocéder l'avoir social, et il ne pourrait à tout événement exercer son recours contre ses associés, ses co-débiteurs, qu'en leur tenant compte de cet avoir. Mais, de plus, il a stipulé qu'ils seraient libérés. Dans les circonstances, je ne vois pas comment il peut invoquer la compensation.

L'appelant a plaidé, en outre, qu'il n'était pas comptable de la somme ré-

clamée, parce que l'acte de société l'autorisait à la retirer de la société. Mais l'associé doit compte, après la dissolution de la société, de ce qu'il a retiré légitimement, en vertu des conventions sociales. Il doit ce compte, non pas à la société, mais à ses co-associés, pour parvenir, comme je l'ai dit, à un partage équitable des profits et pertes.

Ayant écarté les défenses de l'appelant, j'entre maintenant dans le mérite de la demande.

L'intimé allègue que l'appelant a retiré de la société $29,079.31 en sus de son capital, et il prétend qu'il redoit ce montant à ses associés pour les rembourser *pro tanto* de la balance qui leur reste due sur leur capital (après déduction de ce qu'ils ont reçu de la société), savoir, l'intimé, d'une balance de $17,185.82, et Smith d'une balance de $27,379.54. Cette demande est régulière. Ce qu'un asssocié peut exiger de son co-associé, c'est un compte et partage (C. C. 1898). Dans ce compte et partage, chacun fait rapport à la masse de ce qu'il a reçu, les dettes sont déduites et la balance est partagée entre les associés en conformité de la loi et des conventions.

Si objection eût été faite à la nature de l'action, j'aurais été disposé à la renvoyer, mais comme le but de l'action est d'obtenir un partage de ce qui reste de la société, et que, par les conclusions, l'intimé offre de rendre tout compte qui serait jugé nécessaire, offre dont l'appelant n'a pas jugé à propos de se prévaloir, je suis disposé, comme l'a été le juge de la Cour Supérieure, à rendre justice aux parties sur l'action telle qu'intentée.

La cession de biens ayant englouti l'avoir social, il n'y a à compter que sur les rapports des associés pour former une masse. Mais d'un autre côté, les associés ayant été libérés des dettes de la société, la masse doit leur revenir en entier. Elle sert d'abord à acquitter le capital qui revient à chaque associé.

On a prétendu qu'un associé ne devait pas compte à son co-associé d'un capital mis dans la société et perdu. Les règles du droit me paraissent bien claires sur ce point. Lorsqu'une somme d'argent est mise dans le fonds social, elle devient la propriété de la société qui n'en doit aucun compte. Lors de la dissolution, l'associé ne peut pas la réclamer. Mais les associés peuvent stipuler qu'ils reprendront le capital de leurs mises avant le partage de l'actif, et cette stipulation peut s'inférer du prélèvement des intérêts sur les mises, durant la société (Sirey, 1865–1–12). Dans mon opinion, il y a eu convention entre les parties, que le capital serait repayé aux sociétaires avant partage. Mais ce capital n'était pas pour les fins du partage, sujet à augmentation ou réduction, ainsi que le comportent les livres de la société. Cette tenue de livres était pour la commodité des sociétaires, mais ne pouvait changer l'étendue de leurs droits, tels que déterminés par l'acte de société.

Dans un sens, la Cour Supérieure a eu raison de dire que le capital étant perdu, les associés devaient contribuer à la perte de ce capital dans la proportion convenue. Mais avant d'appliquer cette règle, elle aurait dû tenir compte des montants perçus de la société par chaque associé.

Appliquant les règles ci-dessus, il faut procéder à faire la masse en faisant rapporter à chaque associé ce qu'il a reçu de la société, puis acquitter à même cette masse *pro tanto* le capital de chaque associé et diviser la perte dans la proportion d'une $\frac{1}{2}$ pour MacLean et de $\frac{1}{4}$ pour chacun des deux autres associés.

In the Court of Queen's Bench.

No. 29 Judge's Reasons. Chief Justice Lacoste.

Ces opérations ont été faites et le résultat a donné une somme plus élevée que celle du jugement.

Dans les circonstances notre devoir est de confirmer le jugement avec dépens.

No. 30. Certificate as to Judges' Reasons.

We, the undersigned Clerk of Appeals for the Court of Queen's Bench for Lower Canada, hereby certify that any notes other than those of Chief Justice Lacoste have not been received from the judges of said Court, although duly applied for.

Montreal, 15th December, 1894.

MARCHAND & DUGGAN,
Clerk of Appeals.

No. 31. Petition to be allowed to appeal to Supreme Court of Canada, dated 13th October, 1894.

Canada, Province of Quebec, District of Montreal. } In the Court of Queen's Bench. (Appeal Side.)

No. 43.

John MacLean, - - - - - - Appellant,
and
Alexander Stewart, - - - - - Respondent,
and
James Smith, - Mis en cause.

To the Court of Queen's Bench, sitting in and for the District of Montreal, or to any one of the Honorable Judges thereof in Chambers:

The humble petition of John MacLean, of the City and District of Montreal, trader, the said Appellant, respectfully represents:

That the appeal of the said John MacLean from the judgment of the Superior Court rendered herein condemning him to the payment of ten thousand two hundred and sixty-one dollars ($10,261) with interest and costs, was dismissed by judgment of this Honorable Court rendered on the twenty-ninth day of September last past.

That your Petitioner aggrieved at said judgment and is desirous of appealing from such final judgment of this Court to the Supreme Court of Canada.

Wherefore, your Petitioner prays that he may be permitted to appeal from such final judgment of this Court to the Supreme Court of Canada, and that upon giving security for debt, interest and costs, the execution in this cause be stayed, the whole with costs distraits to the undersigned attorneys.

Montreal, 13th October, 1894.

(S'd) ATWATER & MACKIE,
Attorneys for Appellant.

To Messrs. MACMASTER & MACLENNAN,
Attys for Respondents.

Gentlemen,

Take notice of the foregoing petition, and that the same will be presented for allowance before one of the Honorable Judges of said Court of Queen's Bench, on Monday, the twenty-eighth day of October instant, at half-past ten of the clock in the forenoon, and that the said Appellant will then and there give good and sufficient security for the prosecution of such appeal, and that such sureties will be Andrew F. Gault, Esq., merchant, and Samuel Finley, Esq., merchant, both of the City and District of Montreal, who will then and there justify as to their sufficiency if required.

Montreal, 13th October, 1894.

('S'd) ATWATER & MACKIE,
Attys for Appellant.

Received copy under reserve of all objections.

MACMASTER & MACLENNAN,
Attys for Respondent.
ALEX. STEWART.

BAIL BOND IN APPEAL TO SUPREME COURT.

No. 32. Bail Bond in appeal to Supreme Court, dated 29th October, 1894.

Be it remembered that on the twenty-ninth day of October, in the year of our Lord one thousand eight hundred and ninety-four, at the City of Montreal, before me, the Honorable Sir Alexandre Lacoste, Knight, Chief Justice of the Court of Queen's Bench for Lower Canada, came and appeared Andrew F. Gault, merchant, and Samuel Finley, gentleman, both of the City of Montreal, who declare themselves jointly and severally bound and liable unto and in favor of the said Alexander Stewart, his heirs, assigns and representatives in the sum of five hundred dollars, current money of Canada, to be made and levied of the several goods and chattels, lands and tenements of them the said Andrew E. Gault and Samuel Finley to the use of the said Alexander Stewart, his heirs, assigns and representatives subject to the condition hereinafter mentioned, to wit:

Whereas judgment was rendered in the said cause in the said Court of Queen's Bench on the twenty-ninth day of September, one thousand eight hundred and ninety-four on the appeal instituted in this cause, and whereas the said John MacLean is desirous of appealing from the said judgment to the Supreme Court of Canada.

Now, the condition of this bond is such that if the said John MacLean do prosecute effectually the said appeal to the Supreme Court of Canada, and do pay unto the said Alexander Stewart such cost and damages as may be awarded unto him by the said Supreme Court of Canada in the event of the said judgment of the said Court of Queen's Bench being confirmed, then the present obligation shall be null and void, otherwise the same to be and remain in full force and virtue.

And further, the said Andrew F. Gault and Samuel Finley declare them-

RECORD.

In the Court of Queen's Bench.

No. 32. Bail Bond in appeal to Supreme Court, dated 29th October, 1894—*continued.*

selves bound and liable, jointly and severally unto and in favor of Alexander Stewart, his heirs, assigns and representatives in another sum of fourteen thousand dollars, current money of Canada, to be made and levied of the several goods and chattels, lands and tenements of them the said Andrew F. Gault and Samuel Finley to the use of the said Alexander Stewart, heirs, assigns and representatives, subject to the condition hereinafter mentioned.

Whereas the judgment appealed from, to wit: the judgment rendered by the said Court of Queen's Bench, on the twenty-ninth day of September, one thousand eight hundred and ninety-four, directs the payment by the said John MacLean to the said Alexander Stewart of the sum of ten thousand two hundred and sixty-one dollars and eight cents and a half, with interest from the second day of May, 1892, as condemnation money and of the costs by him incurred, as well in the Court of original jurisdiction, to wit, the Superior Court for Lower Canada, sitting at Montreal, as in the Court of Appeal, to wit, the said Court of Queen's Bench for Lower Canada (Appeal Side).

Now the condition of this last bond or obligation is such that if the said John MacLean do pay to the said Alexander Stewart the said sum of ten thousand two hundred and sixty-one dollars and eight cents and a half, with interest as aforesaid current money of Canada, so directed to be paid by the said judgment, and the costs incurred by the said Alexander Stewart in the said Superior Court sitting at Montreal, and in the Court of Queen's Bench, in the event of the said judgment of the said Court of Queen's Bench being confirmed or the part thereof as to which the judgment may be affirmed, if it be affirmed only as to part and all damages and interest awarded against the Appellant on the said Appeal, then this further obligation shall be null and void, otherwise the same to be and remain in full force and virtue.

And the said Andrew F. Gault and Samuel Finley have signed.

A. F. GAULT.
SAML. FINLEY.

Taken and acknowledged before me, at the City of Montreal, the day and year first above written, the said sureties having first duly justified their solvency.

A. LACOSTE, C. J. Q. B.

The said Andrew F. Gault, being duly sworn, doth depose and say, that he is worth the sum of fourteen thousand five hundred dollars, current money of Canada, over and above what would pay his just and lawful debts, and he hath signed.

A. F. GAULT.

Sworn before me, at Montreal, this twenty-ninth day of October, one thousand eight hundred and ninety-four.

A. LACOSTE,
C. J. Q. B.

The said Samuel Finley, being duly sworn, doth depose and say that he is worth the sum of fourteen thousand five hundred dollars, current money of Canada, over and above what would pay his just and lawful debts, and he hath signed.

SAMUEL FINLEY.

Sworn before me, at Montreal, this twenty-ninth day of October, one thousand eight hundred and ninety-four.

A. LACOSTE,
C. J. Q. B.

No. 32
Bail Bond in appeal to Supreme Court, dated 29th October, 1894—
continued.

Canada, Province of Quebec. } Court of Queen's Bench, (Appeal Side)

IN CHAMBERS.

No. 33.
Order allowing appeal to Supreme Court of Canada, dated 29th October, 1894.

Montreal, Monday, the twenty-ninth day of October, one thousand eight hundred and ninety-four.

Present—The Honourable SIR A. LACOSTE, Knight Chief Justice.

No. 43.

John MacLean, - - Appellant,

and

Alexander Stewart. - - - Respondent.

Seeing that the sum or value in the matter in controversy in this cause amounts to over two thousand dollars and that the said John MacLean has given security to the extent of five hundred dollars as required by the 46th section of Chapter 135 of the Revised Statutes of Canada. (The Supreme and Exchequer Courts' Act, 1886,) that he will effectually prosecute the appeal and pay such costs and damages as may be awarded against him by the Supreme Court.

The appeal to the Supreme Court is hereby allowed.

A. LACOSTE,
C. J. Q. B.

RECORD.

In the Court of Queen's Bench.

No. 34. Order determining case to be transmitted to Supreme Court of Canada, dated 12th December, 1894.

Province of Quebec, Canada, } Court of Queen's Bench, (Appeal Side,) IN CHAMBERS.

Montreal, Wednesday, the twelfth day of December, one thousand eight hundred and ninety-four.

Present—The Honourable Mr. JUSTICE HALL.

No. 43.

John MacLean, - - Appellant,

and

Alexander Stewart, - - - - - Respondent,

and

James H. Smith, - - Mis en cause.

After having heard counsel on both sides upon the application by the said Appellant's attorneys to determine the "case" to be transmitted to the Supreme Court of Canada upon an appeal from this Court from a judgment rendered by this Court on the twenty-ninth day of September last (1894), and mature deliberation on the whole being had

Doth order that the said "case" be composed as prayed for with the addition of the following schedules. viz.: Nos. 24, 30, 32, 34, 35 and 37 of Respondent's suggestions and that Defendant's Exhibit No. 2 with plea be printed in full, including Schedule No. 15 of Appellant's case.

ROBERT N. HALL,
J. Q. B.

No. 35. Certificate of settlement of case and as to security on appeal to Supreme Court of Canada, dated 15th December, 1894.

We, the undersigned Clerks of the Court of Queen's Bench for Lower Canada, Appeal Side, at Montreal, do hereby certify that the foregoing printed ducuments from page 1 to 132, inclusive, is the case settled by one of the honorable Judges of this Court in Chambers on the twelfth day of December instant pursuant to section 44 of the Supreme and Exchequer Courts' Act and the Rules of the Superior Court of Canada, in a certain cause lately pending in the said Court of Queen's Bench, Appeal Side, between John MacLean, Apellant, and Alexander Stewart, Respondent, and James H. Smith, mis en cause.

And we do further certify that the said John MacLean, now Appellant, to the Supreme Court, has given security to the satisfaction of one of the Hon. the Judges of the said Court of Queen's Bench, as required by the 46th section of the Supreme and Exchequer Courts' Act, such security being a bond to the amount of ten thousand two hundred and sixty-one dollars and eight cents and a half upon said Appeal to the Supreme Court, a printed copy of which is to be found on 129 of this printed document.

In testimony whereof we have hereunto subscribed our name and affixed the seal of the said Court of Queen's Bench, Appeal Side, this 15th day of December, one thousand eight hundred and ninety-four.

SEAL.

(Signed) MARCHAND & DUGGAN,
Clerks of Appeal.

This is an appeal from a judgment of the Court of Queen's Bench, Montreal, rendered September the 29th, 1894. (Case p. 121) confirming a judgment of the Superior Court rendered May 13th, 1893, (Case pp. 117-120), which condemned Appellant to pay Respondent $10,261.08½.

The Respondent claims from the Appellant, his former partner, a part of his (Respondent's) contribution to the capital stock of the firm John MacLean & Co.

On December 31st, 1886, Appellant, Respondent, and the Mis en Cause, formed a partnership for five years beginning January the 1st, 1887. MacLean was to put into the firm whatever was due to him from the former firm of John MacLean & Co., of which he was a member, and the two others, the deposit which each had in the same firm.

Appellant's contribution was established at	$ 4,480 91
Respondent's at	25,292 47
Smith's at	30,350 96
	$60,124 34

The partnership was dissolved on July 22nd, 1891, before the expiration of the period agreed by a judicial abandonment of property which the partners made on the demand of their creditors (Case p. 73).

Although their statement showed a surplus of about $15,000, it is admitted that the firm was completely insolvent.

After the firm had made an offer to pay 40 cts on the dollar which was refused, Appellant to the knowledge of his partners, offered a composition of 50 cts on the dollar for the unsecured creditors and payment in full of the privileged claims on condition that the property should be transferred to him personally, and that his partners should have a discharge, (p. 78 of case.) This offer was accepted and the transfer made, (p. 86 of case.)

The Respondent, contending that the abandonment of property and the composition effected by the Appellant have not destroyed the rights and obligations of the partners between themselves, and that Appellant owes him an account of part of his capital of which only the enjoyment had been given the partnership, took the present action to enforce such alleged right.

In order to fix the amount which Appellant owes him, Respondent relies on the private accounts of the partners taken from the books of the firm which established :

To Respondent's credit	$17,185 82
Smith's credit	27,379 50
And to Appellant's debit	29,079 31

According to Respondent, Appellant took this last sum out of his partners' capital, and owes them an account of it, in proportion to the balances carried to their respective credits, which would give Respondent $11,213.30. (Case p. 79).

Appellant pleads confusion and compensation and denies any liability towards Respondent.

He contends that whatever amount he may have drawn from the firm and for which he may be accountable, is a debt due to the firm and consequently

RECORD.

In the Supreme Court of Canada.

No. 36.
Appellant's Factum, dated January, 1895—*continued.*

an asset of the latter which it had transferred to its creditors, who in their turn, transferred it to Appellant, who has thus become his own creditor, thereby extinguishing the debt by confusion.

Appellant further pleads the settlement and the payment by him of sums exceeding $100,000, to the creditors of the firm; that Respondent's liability was far in excess of any amount claimed by his action; and that the Appellant in settling with the creditors was subrogated in their rights and entitled to compensate such rights as against any indebtedness.

The Superior Court gave Respondent judgment for $10,261.08½, but not for the reasons alleged in Respondent's action. Appellant was held not to be accountable for the sum of $29079.31, but was condemned to repay Respondent part of his capital, by virtue of a clause in the partnership articles which binds him to pay half the debts.

According to the judgment, the capital stock of $60,124.34 having been swallowed up by the abandonment, became a dead loss which had to be supported by the partners in the proportion of one half by Appellant and one fourth by the other two partners, making :

For Appellant		$30062 17
For Respondent		15031 08½
For Smith		15031 08½
Respondent having furnished	$25292 57	$60124 34
After deducting his share of the loss	15031 08½	
Has a balance in his favor of		10261 38½
Smith having furnished	$30350 96	
After deducting his share of the loss	15031 08½	
Has a balance in his favor of		15319 87½
Respondent's share of the debts being	30062 17	
And his capital	4480 91	
Has a balance against him of		25581 26
Amount due to Respondent	$10261 08½	
Amount due to Smith	15319 87½	
		25581 26

The Court of Queen's Bench confirmed the judgment, but for different reasons. It held that Appellant was not indebted to the firm, because whatever he had drawn out he had been authorized to draw by the articles of partnership. But that on dissolution of a partnership, each partner, whether indebted to it or not, is bound to return whatever he may have received from the firm, in order that out of the mass so formed, each partner may draw whatever he may be entitled to pretake before the final division of the assets. That the partners had contributed only the enjoyment of the capital put in by them, and had stipulated the right to pretake this capital in full, when the partnership was wound up. That therefore each partner would have to return what he had received in order that out of this fund, so far as it would go, the several partners should be repaid the capital put in by them; and that the deficiency would have to be borne half by Appellant and one-fourth each by

the other partners. That as the result of this operation, Appellant would owe Respondent more than the amount of the judgment, and there being no cross-appeal, the judgment would have to be confirmed.

The Chief Justice was of opinion that the action was bad in form and that it ought to have been dismissed; but that the action being in the nature of a partition, and Respondent having offered an account, and Appellant not having taken advantage of Respondent's offer, he was disposed to adjudicate on the action as brought—(Case p. 126, l. 7–12).

Appellant respectfully submits that the conclusions arrived at by the Courts below are erroneous.

ARGUMENT.

Before going into detail we would first remark that it was manifestly not intended and contemplated by the parties that any rights which Respondent might have had against Appellant should survive the composition. What was evidently meant was that the composition should wipe out the past entirely and place things in the same position as if the firm of John MacLean & Co. had never existed. To suppose Appellant would have assumed the obligations of the composition if he was still to be liable to his co-partners for some $25,000.00; or that the creditors would have discharged the latter and left them $25,000.00 of assets is most improbable and contrary to the intention manifested by the last paragraph of the deed of Retrocession. (Case p 88.) This view of the case evidently impressed the Courts below, which admittedly set aside the probable intentions of the parties, under the mistaken belief that the wording of the composition deed left them no other alternative. Notes of Lacoste, C. J., p. 124, l. 22-35 of case.

It is also to be remembered that while Respondent asks Appellant to make up half the losses, he has himself contributed to less than quarter of them. The total debts were over $180.000.00. (Case pp. 48 and 49). Appellant paid more than half of this, and it appears that the assets he obtained were not worth more than what he gave for them. (Case page 59.) Respondent on the other hand only contributed some $25,000 of capital and by Appellant's composition has been relieved from all the debts.

Let us first enquire as to whether Appellant's overdraft of $29,079.31 constituted an indebtedness to the firm, or as alleged by Respondent in his action, a mere depletion of the capital of both Stewart and Smith.

Respondent alleges in his answer, Case, p. 14, l. 27, that "Defendant was "not entitled to withdraw any sum whatever from the co-partnership business "under the partnership articles when his capital had become exhausted."

This admission on the part of Respondent is all that is required for the purpose of this cause, as Appellant in doing what he was not entitled to do under said articles of co-partnership, necessarily became thereby a debtor to the firm.

Were it necessary we would submit that Appellant was not even entitled to impair his own capital by his drawing on the firm business.

It is first provided by the articles of co-partnership, Case p 66, that the partnership is formed for the term of five years and that the capital of the

RECORD.

In the Supreme Court of Canada.

No. 36. Appellant's Factum, dated January, 1895— *continued.*

business is to be contributed as follows; $4,480.91 by Appellant; $25,292.47 by Respondent, and $30,350.96 by Smith.

It is afterwards stipulated: "On capital so put in or standing at the "credit of the several parties before mentioned interest shall be allowed and "credited at the rate of 7% per annum, and at every succeeding annual balance "interest shall be allowed on the amounts shown at the credit of the partners "on the 31st day of December next preceding."

"The said interest so to be paid on said capital sums shall be charged "on the business of the said co-partnership, and the net profits of said business "after deduction of bad debts, depreciation of stock, of said interest so to be paid "on said capital sums, and of all charges and expenses incurred on carrying "on such business shall be divided between them, the said partners, in the "following proportions, viz.: to the said John MacLean one half and to the "said Alexander Stewart and James H. Smith each one fourth, and the losses "and liabilities, if any, shall be borne by them in like proportion."

Provision is then made as to the manner of ascertaining the share of any partner dying or withdrawing from the firm. In case of dissolution thereof by death or retirement, the survivors or the parties remaining in the firm, were to pay the amount of the capital of the party deceased or retiring. From this and from the fact that interest was to be credited to the partners on their respective capital contributions, Respondent infers that the use only of such capital was contributed.

Then comes in the last clause of the articles of co-partnership: The said partners shall be entitled to withdraw from the said co-partnership business annually as follows: "the said John MacLean the sum of $6,000, and the said Alexander Stewart and James H. Smith, each, the sum of $3,000."

We submit that this last stipulation was made only in contemplation of there being profits to be divided amongst the partners, and that it was in no way contemplated that such drawings would be made out of the capital of the party drawing, and *a fortiori* not out of his co-partners' capital.

Any other interpretation would be incompatible with the clauses of the articles of co-partnership, whereby firstly the several partners were to put in and contribute the above-mentioned amounts respectively as capital in the business; and secondly, interest was to be allowed every year on the amounts shown at the credit of the partners *on the 31st day of December of the year previous*, which clearly indicated that such capital was not to be impaired by drawings made in the mean time.

That Appellant's drawings were made out of the business generally, and not against Respondent or Smith's capital, appears from the way the books were kept by Respondent himself showing that no portion of such drawings was debited to either Respondent's or Smith's capital accounts. (Case pp. 111, 112 and 113).

It therefore follows that Appellant, in drawing as he did from the business, the said sum of $29,079.31, when he had no right to do so, became thereby primarily liable to the firm for the amount of such drawings, and that on his purchasing the assets of the firm and taking a transfer thereof, the said indebtedness became extinguished by confusion.

Independently however of the above considerations, let us now enquire what was the effect of the purchase made by Appellant from the curator of the estate, as representing the creditors, and which was conditional upon his obtaining his own discharge and that of his two co-partners.

It is not of course denied that after a firm has made an abandonment of its property and the creditors have been paid in full, the partners resume the exercise of their personal rights, and are entitled to an account from one another and to a final settlement of the partnership affairs according to the articles of co-partnership. But the question is how far, in the present cause, Respondent, as the result of the purchase made by Appellant of the assets of the firm, conditional upon his getting his own discharge and that of his co-partners, resumed the exercise of his personal rights, or in other words, what did the assets purchased by Appellant comprise and what was the effect of the discharge granted him by the curator as representing the creditors.

It is important to bear in mind that an abandonment by a commercial firm, includes by operation of law, not only the partnership property, but also the private property of the partners, and that the curator as the representative of the creditors generally is vested with all the property thus abandoned, whether disclosed or not disclosed in the bilan.

Reid vs. Bisset, 15 Q. L. R. p. 108.
Re McFarlane, 12 L. C. J. p. 239.
Lewis vs. Jeffry, 28 L. C. J. p. 132.
Ontario Bank vs. Foster, 6 Legal News, p. 398.
Bedarride, Faillites, vol. 2, Nos. 743-4.
C. P. C. Arts—772 and 778.
See also notes of Lacoste, C. J. p. 124, ll. 11–20 of case.

It is also important to bear in mind that a stipulation in a partnership contract, that only the use of the capital is contributed by the partners to the firm, has effect only as between the partners after the dissolution of the partnership and the payment of all their creditors, and that quoad the firm and its creditors, the capital thus contributed is to be deemed as contributed absolutely. Otherwise, it would follow that both Respondent and Smith would have had an individual claim against the firm for their respective amount of capital, and that their private or individual creditors would have been entitled to be paid out of said claim in preference to the creditors of the firm.

Thus suppose the firm had made a special deposit with their banker of the $25,000 contributed by Respondent as his share of capital, and that the said deposit had remained intact, on Respondent's theory, after the insolvency of the firm, Respondent's private or individual creditors would have had a right to be paid out of this special deposit in preference to the creditors of the firm.

Art. 1899 C. C.

Or again, suppose Respondent's capital thus contributed had been converted into identifiable buildings or other assets, and the insolvency of the firm took place, then on the same theory the private and individual creditors of Respondent would be entitled to be paid out of the proceeds of such building or other assets in preference to the creditors of the firm.

If the capital contributed by the partners in the present cause must for all

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continued.

purposes be deemed the property of the firm until payment of all its liabilities, or in other words, if it was the common pledge of the creditors of said firm for the payment of their claims, it necessarily follows that it formed part of the assets of the estate sold to Appellant and that the discharges claimed to have been granted to both Respondent and Smith were granted without prejudice to such pledge and referred only to such liability as remained after the realization of the assets of the estate.

Otherwise the creditors would have both granted a discharge and abandoned their pledge on part of the assets covered by the abandonment.

That such was not the intention is evident from that part of the deed of retrocession, Case pp. 86 and 88 whereby it is stipulated, that "in consideration of the creditors of the firm waiving security on the first and second of the composition instalments, Appellant agreed to hold the assets of the estate intact for the benefit of the holders of the composition notes and not to place any lien or privilege upon such assets or suffer any to exist thereon until the said first and second payments of the said composition were satisfied."

It will, however, be contended that, at the same time of the abandonment, instead of there being a surplus there was a deficit; that the capital contributed by the several partners had been wiped out and that it could not be said to form part of the assets. And further, that the judgment appealed from, on its bases, the rights and actions arising from the partners having respectively contributed unequal amounts to the capital of the firm and from the loss of such capital.

There is evidence of record that at the time of the abandonment there was a very large deficit which no doubt exceeded the amount of the whole capital contributed by the members of the firm. But it does not follow that because there may have been such a deficit the capital contributed by the partners should not be considered for the purpose of the present cause as forming part of the remaining assets.

But whether the capital thus contributed to the firm remained intact or was entirely wiped out and as the result of the partnership contract the partners have claims against one another for lost capital the private creditors of the partners can in no way come in conflict with the creditors of the firm and these are preferred on the proceeds of said claims as they would be on the capital such claims represent.

Admitting, however, for the sake of argument that the capital should be considered as having been entirely wiped out and that consequently the Respondent had a personal claim against Appellant, as we have shown above that the abandonment made by the firm involved and comprised the private assets of the partners, it follows that the curator represented as well the individual creditors of the partners as the creditors of the firm and that both classes of creditors possessed or had a right of pledge upon the present right of action. And it matters not whether the creditors of the firm were to be preferred or not to the individual creditors in the distribution of the proceeds or the value of such right of action.

We claim and have shown above that quoad the creditors of the firm the right of action in question was a partnership asset. But even on the theory

that it was not so we have also shown that the abandonment involved and comprised the private assets, it follows that from that moment and by reason of the abandonment the private assets of the partners became part of the estate, and if we have, as was done by the courts below, to confine ourselves to a strict construction of the terms of the deed of retrocession instead of taking the spirit of the whole transaction, as we contend should be done, we respectfully submit that the curator transferred to Appellant, amongst other things, the right of action in question, he having transferred "all the assets and estate generally of the said late firm of John MacLean & Co. as they existed at the time the curator was appointed."

The abandonment was made on the 22nd July, 1894, (Case p. 76) and the curator was appointed August the 11th, 1894, (Case p 114.)

Apart from the above considerations it is respectfully submitted that Respondent's right of action was extinguished as a necessary consequence of the discharge granted to Appellant.

Respondent bases his claim on the discharge obtained by Appellant as the condition of the composition. Respondent's acceptance of this condition involves on his part a ratification of the whole transaction including the discharge granted to Appellant. Now, as we have already shown, the curator represented both classes of creditors and was vested with the private assets of the partners as well as the assets of the firm. He was therefore seized of the right of action in question for the benefit alike of the creditors of the firm and the private creditors of the partners; subject only to whatever right of preference one class of creditors might have over the other, and as there was no reserve whatever made, but on the contrary, it was made a condition of the composition that Appellant should be granted a discharge by the creditors, the word "creditors" referred to the creditors generally, and the right of action was in consequence extinguished.

It should also be remarked that the terms of the transfer and retrocession were as broad as the terms of the abandonment, and that the latter comprising the private assets, the deed of transfer and retrocession should be deemed to comprise them also.

Respondent's pretension may also be disposed of as follows:—

Appellant obtained from the creditors a discharge for himself and his copartners. This discharge which is the only one invoked by Respondent, and without which he would have no pretense to the claim in question, is a release in full of all the claims of the discharging creditors. If the discharging creditors comprise the private creditors of the partners as well as the firm creditors, Appellant has been released from all claims including the claim in question, which by reason of the abandonment was vested in the curator for the benefit of all creditors, subject to whatever right of preference one class might have over the other. If they comprise only the creditors of the firm, Respondent is no better off; because on the one hand the creditors of the firm have released Appellant from all the claims they held against him; and on the other hand, the private creditors not having been parties to the contract are not affected by it, and still retain whatever the abandonment gave them.

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We have thus far argued on the assumption that the use only of the capital was contributed. The reasons given in support of this proposition are: 1st that interest was to be credited to each partner on the amount contributed, and 2nd that in case of death or retirement of a partner, "the share of the deceased or retiring partner in the profits of the said business was to be the amount shown by the balance-sheet for the year ending the 31st December preceding such death or retirement.

We respectfully deny that anything of the kind can be inferred from these premises.

According to our reading of the contract of partnership, the charging of interest and taking the amount shown by the balance-sheet for the year previous as representing the share of profit of the deceased or retiring partner, formed and were intended as part of an easy and convenient method of ascertaining such share of profits, without embarrassing the firm or remaining partners. And because the partners have thus provided for special contingencies, it does not follow that they intended to depart from the common law for the liquidation of the firm, in the event of its being occasioned by lapse of time or other contingencies about which they were silent.

AUTHORITIES

Pardessus, "Droit Commercial," No. 1086: "Cette obligation de garantie "étant la conséquence du principe, que l'égalité la plus entière doit présider "au règlement des intérêts entre les associés, il peut se présenter une question "assez importante et en quelque sorte en sens inverse, dans le cas où loin de "partager un actif, les associés n'ont à diviser entre eux que l'acquittement "des dettes sociales. Il est clair qu'ils doivent les supporter dans la proportion convenue entre eux; mais comme l'un d'eux peut avoir payé aux créanciers au-delà de la somme à laquelle il serait tenu d'après ce calcul proportionnel, les autres sont obligés ensuite de lui en faire raison, et les bases convenues pour les associations, sont dans ce cas la seule règle à suivre.

"Ainsi, Pierre et Jacques formaient une société qui a été dissoute par leur "faillite. Leur fortune réunie ne pouvant acquitter la totalité de la dette "sociale qui est de 200,000 fr., ils font cession de tous leurs biens. Cet abandon est inégal; Pierre cède 80,000 francs, et Jacques 50,000 francs, ce que, "au total, ne produit que 130,000 fr. et laisse les créanciers en perte de 70,000 "francs. Néanmoins, au moyen de cette cession, ils tiennent quittes leurs "deux débiteurs. Après quelques années, Jacques rétablit ses affaires: Pierre "pourra-t-il exiger de lui une somme de 15,000 fr. faisant moitié de ce qu'il se "trouve avoir payé de plus que lui aux créanciers communs? On peut dire, "en sa faveur, que si la somme payée aux deux créanciers de la société n'a pas "été du total de ce qui leur était dû, cependant cette somme a libéré la société; que chacun d'eux devant moitié de cette somme, si les circonstances "ont pu faire que ce paiement eût lieu d'une manière inégale, ça été une sorte "de prêt, dont le remboursement peut être exigé par celui qui l'a fait, dès que "son ci-devant associé est revenu à meilleure fortune.

"Il nous semble que Pierre ne serait pas fondé: la faillite de la société,

" en la dissolvant, a fini lés obligations de chacun. Si l'un et l'autre étaient " débiteurs de 200,000 fr. envers les créanciers, ils étaient, l'un à l'égard de " l'autre, obligés de payer jusqu'à concurrence de 100,000 fr. chacun. Pierre " s'en est libéré pour 80,000 ; Jacques qui devait aussi 100,000 s'en est libéré " par 50,000 fr. Pierre n'a pas payé plus qu'il ne devait, il n'a donc rien payé " à la décharge de Jacques ; or, le recours du co-débiteur contre son co-débiteur " solidaire, n'est fondé que lorsqu'il a payé plus que sa part. La remise n'a " pas été faite à la société qui n'existait plus, mais à chacun des co-débiteurs " pour ce qu'il pouvait en profiter.

Sirey, v. 1861–1–315.

" Jugé : Au cas où, d'après l'acte de société, les mises sont inégales, et où " cependant les pertes doivent être supportées par moitié, la perte du fonds " social n'autorise pas l'associé qui a apporté une mise plus forte à exercer une " action en répétition contre celui qui a apporté une mise plus faible, sous pré- " texte de rétablir l'égalité dans la contribution aux pertes."

L'arrêtiste ajoute en note :

" S'il en était autrement les mises ne seraient plus inégales. Il ne faut " pas confondre, en effet, la perte des mises ou du fonds social qui est une perte " faite par la société à laquelle ce fonds appartient avec les pertes qui excèdent " le fonds social, du rapport de chacun des associés : ce sont ces dernières pertes " qui doivent être supportées également malgré l'inégalite de la mise."

Also *Dalloz* ; 1861–1–161.

Marcadé refers to this case and approves of the principle ; Marcadé, Vol. 7, No. 460, p. 342–3 Ed. 84.

See also decision reported.

Sirey v. 1808–2–354.

Sirey v. 1809–2–47.

Sirey v. 1865–1–12.

Aubry & Rau, Vol. 4, Art. 380, p. 557.

" Réciproquement, si les mises étant inégales, il avait été convenu que les " bénéfices et les perts se partageraient par portions égales, la circonstance que " le fonds commun aurait été complètement absorbé n'autoriseraient pas l'as- " socié, qui a fait l'apport le plus considérable, à exiger des autres une indem- " nité proportionnée à la différence des mises."

The case of Dupouilly vs. Gouin (Dalloz, 1869. 1. 467) referred to in the notes of Lacoste, C. J., is not in point. For in that case, only the assets of the firm were abandoned, and each partner retained his individual rights, and in consideration of the abandonment made by them of the assets of the firm to its creditors, they obtained their discharge.

We beg to refer to the following note of the reporter of that case.

" Cette solution paraît au premier abord en contradiction avec deux arrêts " de la Cour de Reims, des 24 Fév. 1808 et 5 Avril 1809, rapportés per Gen. ; " Vo. Société No. 993. Ces arrêts jugent que, lorsque les associés ont fait " abandon aux créanciers de la société de tous leurs biens pour obtenir leur li- " bération, celui qui se trouve avoir payé plus que les autres ne peut exercer " contre ceux-ci aucun recours, et en ce sens, Pardessus, Droit Com., tome 4, " No. 1086 ; contrats Delvincourt, Inst. du Dr. Com., tome 2, p. 17, note 3."

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No. 36. Appellant's Factum, dated January, 1895— *continued.*

" Les arrêts ci-dessus rapportés décident que, lorsque les associés ont fait " abandon aux créanciers de l'actif social afin d'obtenir leur libération, celui qui " se trouve avoir payé plus que les autres, parcequ'il avait fait un rapport plus " considérable, a un recours contre ses anciens associés pour la différence."

" Mais ces deux solutions peuvent être conciliées, et chacune est également " exacte dans l'hypothèse à laquelle elle s'applique. Lorsque les associés ont " cédé à leurs créanciers *tous leurs biens*, aucun d'eux ne saurait exercer contre " les autres une *action qui aurait une origine antérieure à la cession*, puisque par " l'effet de la cession chacun s'est dépouillé de tous ses droits et actions au profit " des créanciers, et *pourvu que les valeurs abandonnées par l'un des associés ne* " *soient pas supérieures à sa part dans la dette commune*, aucun n'a de recours à " exercer contre les autres à raison de l'abandon qu'il a fait de ses biens, puis- " que, par cet abandon, chacun s'est simplement libéré de sa propre dette, de " *sa part dans la dette commune. Mais il en est autrement lorsque les associés* " *n'ont abandonné aux creanciers que l'actif social.* D'une part, chacun des asso- " ciés a conservé ses droits et actions personnels, et d'autre part, chacun des " associés a été libéré par l'abandon d'une chose commune de l'actif social. Si " cette chose commune *qui a libéré également* tous les associés n'a pas été formée " par des mises égales, n'est-il pas juste d'accorder à celui qui a contribué pour " une plus forte part à la constitution de cette chose commune, un recours " contre les autres à raison de cette différence ? C'est ce que décide l'arrêt " ci-dessus rapporté."

A case of Binney vs. Mutrie and others, 12 L. R. Appeal Cases, was cited before the Courts below, by Respondent, but it is not a case in point. First, because there was neither abandonment, or composition, or discharge, and second, because under the English Law, unless otherwise provided, only the use of capital is contributed (Lindley on partnership, 5th Ed., pp. 402 & 403); whereas under the French Law, which alone governs the present cause, the capital contributed becomes the property of the firm to all purposes, and on liquidation is treated like any of its other assets. (26 Laurent No. 267 *et seq.* Pont Société No. 365, notes of Lacoste, C. J. p 126, l. 19).

Montreal, January, 1895.

ATWATER & MACKIE,
Attorneys for Appellant

Resp's Factum

For convenience the Respondent adopts the statement of the case made by Sir Alexander Lacoste, Chief Justice of the Court of Appeals, giving a translation of the judgment in its entirety, but noting at the close the exceptions which he takes to the comments upon the form of the action and the right of action :

Sir Alexander Lacoste, Knight, C. J. :—Stewart, the Respondent, claims from the Appelant, MacLean, his former partner, part of his contribution to the partnership capital of John MacLean & Co.

On the 31st December, 1886, MacLean, Stewart & Smith formed a partnership for the term of five years, to be reckoned from the 1st January, 1887.

MacLean was to contribute to the partnership what was coming to him from the old firm of John MacLean & Co., in which he was a partner, and the other two, the amount that each had on deposit in the old firm.

MacLean's contribution was found to be	$ 4480 91
Stewart's " " "	25292 47
Smith's " " "	30350 96
Total	$60124 34

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The partnership was dissolved on the 22nd July, 1891, before the expiration of the term agreed upon by a judicial abandonment which the partners made at the demand of their creditors. Although the statement prepared by the partners showed a surplus of about $15,000, it is nevertheless admitted that the partnership was wholly insolvent.

No. 37. Respondent's Factum, dated 23rd January, 1895.

MacLean, to the knowledge of his partners, offered a composition of 50c on the dollar to the ordinary creditors and the payment in full of all privileged claims on condition that the estate and effects (of the firm of John MacLean & Co.) would be retroceded (to him personally), and that his partners would obtain a discharge. His offer was accepted, and the retrocession was effected. The Respondent contends that the abandonment and the composition effected by the Appellant did not extinguish the rights and obligations of the partners between themselves, and that the Appellant must account for part of his, Respondent's, capital, of which the enjoyment only was contributed to the partnership.

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In order to determine the amount which the Appellant owed to the Respondent, the latter based his calculations on the personal accounts of the partners taken from the books of the partnership, which show

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To the credit of Stewart	$17185 82
" " Smith	27379 54
and to the debit of MacLean	29079 31

According to the Respondent MacLean would appear to have taken this latter sum from the contributions of his partners, and he must account to them in the proportion of the balance carried to their respective credit, which would give the Respondent a sum of $11213.20 and which is the amount demanded in his action.

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The Appellant pleaded confusion and compensation, He pretends that the total amount he drew from the partnership and for which he might be accountable is a debt due to the partnership, and consequently an asset thereof which was transferred to their creditors and who in turn retroceded it to the Appellant, and that thus the Appellant became his own creditor, which effected an extinction of the debt "by confusion."

The Appellant offers in compensation of the amount he might owe, the composition he paid to the creditors, and the payment of the privileged claims

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of the partnership. In addition he denies indebtedness. The articles of partnership authorized him to draw $6,000, and his partners $3,000, and he pretends that he has not drawn more than his share.

The learned Judge of the Court below dismissed the pleas of the Appellant and rendered judgment in favor of the Respondent for $10,261.08½ in reimbursement of part of his contribution to the capital. The reasons of the judgment are not those of the action. The Appellant is not held accountable for the sum of $29,079.31, but he is condemned to refund to the Respondent part of his capital in virtue of the clause in the Articles of Partnership, which obliges the Appellant to pay half the debts.

By the terms of the judgment the partnership capital, which was $60,-124,44. having been completely swept away by the judicial abandonment of the estate, became a total loss which had to be borne by the partners in the proportion of one-half by tho Appellant, and one-quarter by each of the other partners, making :

For MacLean		$30,062.17
For Stewart		15.031.08½
For Smith		15,031.08½
	Total	$60,124.34
Stewart having contributed	$25,292.57	
Deducting his share of the loss	15,031.08½	
Balance in his favor		$10,261.38½
Smith having contributed	$30 350.96	
Deducting his share of the loss	15,031.08½	
Balance in his favor		$15,319.87½
MacLean's share of the loss	$30,062.17	
His capital	4,480.91	
Balance against him		$25,581.26
Amount coming to Stewart	$10,261.38½	
Amount coming to Smith	15,319.87½	
Total		$25,581.26

Before examining the merits of the action an important question concerning the right of action of the Respondent must be decided.

Did the abandonment deprive the partners of any recourse they could reciprocally have in settling the affairs of the partnership which had existed between them ?

The Appellant says yes. According to him the judicial abandonment of the estate transferred to the curator, not only the estate and rights of action of the partnership of John MacLean & Co., but also the personal estate of the members of the partnership, from which it would result that the Respondent had lost every recourse against his partners. I believe the proposition of the Appellant is right in principle ; that the judicial abandonment of the estate of a partnership includes not only the partnership property, but also the property of the partners, and that this transmission is effected by the sole operation of law.

Reid vs. Bisset, 15 Q. L. R. p. 108—C. C. P. 772.

It is a consequence of the joint and several obligations that each of the partners contracts towards the creditors of the partnership. It is on this principle that the decrees of the Court of Rennes cited by the Appellant (Sirey 1808-2-354 : Sirey 1809-2-47) are based and which denied to a partner his recourse against his co-partner after the partnership had been put in liquidation.

But in the present case there has been a composition and discharge, that is to say, the creditors discharged the members of the partnership in consequence of the composition which MacLean, one of the partners, obliged himself to pay.

From this moment the partners regained the exercise of their personal rights, which the abandonment had taken from them. The Appellant pretended that these rights were included in the transfer which the curator made to him, in consideration of the payment of the composition. *But the offer of the Appellant and the deed of transfer of the curator establish the contrary.* Perhaps the parties did not exactly understand their position, but we may very well take their writings as an expression of their intention. The Appellant offered a composition to the creditors of the partnership, in consideration of the transfer that would be made to him of the partnership property. *I do not think his intention was to assume the personal debts of his partners, nor to acquire their estate* The partners having regained the exercise of their personal rights, could reciprocally demand from each other a settlement of the business of their partnership.

The Cour de Cassation, (Dalloz, 1869-1-467,) has decided that the members of a partnership who had obtained their discharge by abandoning the partnership assets to the creditors could reciprocally exercise their personal recourse in the settlement of partnership accounts between themselves.

Coming back to the merits of the action we must examine the effect of the pleas fyled by the Appellant. He pretends that the debt claimed by the Respondent, supposing it existed, was extinguished by confusion.

The action of the Respondent is based, as I said, on a statement of account taken from the books of the partnership, which establishes that the Appellant is indebted in the sum of $29,079.31. The Appellant submits that this debt was due to the partnership, and that it was transferred to the curator who retroceded it to him in consideration of his composition.

I do not believe that the Appellant was indebted to the partnership for the amount of his drawings, The partnership could not claim anything from the Appellant, as by one of the clauses of the partnership articles he was authorized to draw $6000 per annum and he did not draw in excess of that amount. But at the dissolution of the partnership each partner must account to his co-partner for what he has received from the partnership in order that an equitable division in conformity with law and the partnership articles may be affected, and this is the nature of the Respondent's demand. The Appellant was, therefore, in error when he pleaded the extinction of the debt by confusion.

The plea of compensation does not appear to me to be better founded. The Appellant offers in compensation the amount of the composition, and he invokes his subrogation in the rights of the creditors of the partnership, of which he

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In the Supreme Court of Canada.

No. 37. Respondent's Factum, dated 23rd January, 1895—*continued.*

paid the debts. There is no subrogation. The Appellant received value for the amount of his composition as he obtained a retrocession of the partnership estate, and he could not in any case exercise his recourse against his partners and co-debtors. except by accounting to them for this estate.

But more than that he stipulated that they would be discharged. Under these circumstances I cannot see how he can invoke compensation.

The Appellant further pleaded that he was not accountable for the amount demanded as the articles of partnership authorized him to draw that sum from the partnership. But the partner must account after the dissolution of the partnership for what he has legally drawn *in virtue of the articles of partnership.* He owes this account not to the partnership but to his co-partners, in order to arrive, as I said before, at an equitable division of the profits and losses.

The balance remaining still due on their capital (deduction being made of what they have received from the partnership) namely, to the Respondent a balance of $17,185.82 and Smith a balance of $27.379,54.

Having disposed of the Appellant's plea, I proceed now to the merits of the demand.

The Respondent alleges that the Appellant withdrew from the partnership $29,079.31 in excess of his capital and he pretends that he still owes this amount to his partners, in order to reimburse them.

This demand is irregular. What one partner can claim from his co-partner is an account and partition. (C. C. 1898). In this account and partition each returns to the mass what he has received, the debts are deducted and the balance is divided between the partners in conformity with law and the partnership articles.

If objection had been made to the form of the action I would have been disposed to dismiss it, but as the object of the action is to obtain a division of what remains of the partnership, and by the conclusions, the Respondent offers to render any account that may be deemed necessary, an offer of which the Appellant did not think fit to avail himself, I am disposed as was the Judge of the Superior Court to do justice to the parties on the action as brought. The abandonment having absorbed the assets of the estate, there is nothing available to form the mass, but the drawings of the partners. But on the other hand, the partners having been discharged from the partnership debts, the mass must return to them in its entirety: it is then applied towards the *payment of the capital which is due to each partner.*

It was urged that a partner does not owe an account to his co-partner for a capital sum contributed, which the partnership has lost.

The rules of the law appear to me very clear on that point. When a sum of money is contributed to a partnership capital, it becomes the property of the partnership which does not owe any account. At the dissolution the partner cannot claim it. But the partners can stipulate that they will pretake the capital contributed by them before the division of the assets, and this stipulation can be inferred from the withdrawal of interest on the amount of their capital during the partnership. (Sirey 1865-1-12). In my opinion there was a stipulation between the parties that the capital would be repaid to the partners before the partition. But this capital was not for the purposes of division, subject to increase or reduction, as the books seem to show.

This system of bookkeeping was for the convenience of the partners but could not change the extent of their rights as determined by the articles of partnership.

In one sense the Superior Court was right in saying that the capital being lost, the partners were obliged to contribute to the loss in the proportion agreed upon. But before applying this rule it ought to have taken into account the amounts received from the partnership by each partner.

Applying the rules hereinabove set forth, we must proceed to form the mass, by compelling each partner to return all he has received from the partnership, then pay from this mass *pro tanto*, the capital of each partner and divide the loss in the proportion of one-half for MacLean and one-quarter each for his two partners.

These calculations have been made and the result has given a sum in excess of the judgment.

Under these circumstances our duty is to confirm the judgment with costs.

As to the form of the action. It is undoubted as expressed in the Civil Code, Article 1898, that:

"Upon the dissolution of the partnership each partner or his legal representatives may demand of his co-partners an account and partition of the property of the co-partnership, etc."

This does not express or imply negation of an action for debt if the accounts have been taken and are stated and unquestioned, as in the present instance. The action as brought proceeds upon the principle that MacLean having drawn out all his capital, and $29,079.31 in addition, could have no interest in the distribution of the latter sum when paid back, and that it might properly be distributed between the two partners having balances standing as capital at their respective credits in the books of the firm.

But Stewart did not rest his demand upon this alone. He fyled and invoked the articles of co-partnership and the settled accounts. He offered an account if the settled accounts were deemed unsatisfactory. The settled accounts were not disputed. He sets out all the circumstances in his statement of claim. If these circumstances entitled him to an amount equal to that demanded by him he should have a judgment for it, and it is no bar to his demand that he might have demanded something else, or that he concludes in his declaration for a less sum than he might have demanded.

No objection was raised to the form of action, in the verbal or written pleadings, in the Superior Court, or in the Court of Appeals—nor indeed could there be any for the statement of claim, the articles of co-partnership and the accounts which were settled, raised the whole issue, and the Defendant recognized this and met the issue squarely with the pleas stated in the remarks of the Chief Justice. The pleadings and documents of record raised the whole issue at once.

A partner may take an action to account, but he is not bound to do so, and the more especially when he has the account already.

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There is nothing in the law to prevent a partner suing his co-partner by a direct action for debt. If he discloses a cause of indebtedness, the Court cannot deny him a judgment,—and it certainly is no objection that he takes a direct action and not the complicated action to account.

Article 20 of the Code of Civil Procedure is as follows:

"In any judicial proceeding it is sufficient that the facts and conclusions be distinctly and fairly stated without any particular form being necessary, and such statements are interpreted according to the meaning of words in ordinary language."

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But this is a question of procedure only. The regularity of the demand was not raised in the Court below. Both the Court below and the Court of Appeals have held that the action as brought is sufficient, and that ends all questions of procedure.

The Supreme Court will not interfere in the matter of procedure, where no objection was taken in the Court below, or where the Court of Appeals of the province has passed upon the point.

Queen vs. Ames, 290 Cassel's Digest, Can. S. C. R., 141.

Gladwin vs. Cummings, Idem. 426-7.

Dawson vs. Union Bank, Idem, 428-9.

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The real question is the liability of MacLean towards Stewart. Smith is put in the action by Stewart, not as a Defendant, but as a by-stander. Smith simply appeared, but took no part in the controversy between MacLean and Stewart.

The Respondent will now briefly ask the attention of the Court to the effect of the abandonment, MacLean's offer for the purchase of the co-partnership assets, the judgment authorizing the sale, and the judgment authorizing the Curator to transfer the assets, the formal terms of the reconveyance, and the articles of partnership.

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THE ABANDONMENT.

The effect of the abandonment is regulated by articles 778 and 779 of the Code of Civil Procedure, which are as follows:—

Art. 778—"The abandonment of his property deprives the debtor of the enjoyment of his property and gives his creditors the right to have it sold for the payment of their respective claims."

Art. 779—"The abandonment of his property discharges the debtor from his debt to the extent only of the amount which his creditors have been paid out of the proceeds of the sale of such property."

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The abandonment is not a mode of either extinguishing obligations or releasing from debts except to the extent that they are paid or remitted. The claims of the creditors thus would still subsist for the unsatisfied portion of the debts due them had they not released the partners therefor. The claims of the creditors against the partners is one thing and the claims of the partners *inter se* is another and totally distinct thing, which exists separately and independently of the creditors' claims. Now the creditors have released the partners

from these claims, but have they, or could they, release the partners from the claims they may have *inter se?* They have not and could not, and these claims subsist after the discharge and were not extinguished by anything that was done. While their assets were in the hands of their creditors these claims of the partners *inter se* no doubt could be exercised to the prejudice of the creditors, but once the partners were discharged the claims of the partners *inter se* were untrammelled.

MACLEAN'S OFFER TO PURCHASE.

MacLean did not offer to purchase or buy from the creditors the claims of his partners against him. His offer was for the assets of the firm of John MacLean & Co.—the assets of the co-partnership.

"I hereby renew and confirm the offer of composition upon the liabilities of said firm already made by me as follows. &c. (Case, p. 78, line 15.)

THE JUDGMENT AUTHORIZING THE CURATOR TO ACCEPT MACLEAN'S OFFER.

The judgment authorizing the Curator to accept the offer of composition is clear in its terms. (Case, page 78, line 8.)

"I, the undersigned Judge, do authorize the said Curator to accept the said composition and to transfer the assets and estate generally *of the said firm* to the said John MacLean upon receiving from the said John MacLean the composition notes and cash necessary to carry out the same.

(Signed) M. DOHERTY,
J. S. C.

The petition presented to the Superior Court by the Curator asking to be empowered to make the transfer of the estate to MacLean limits the transfer to the "assets and estate generally of the said firm" (of John MacLean & Co.) (Case, page 116, line 8).

THE DEED OF RECONVEYANCE shows that what was conveyed to MacLean were "the assets and estate generally of the said late firm of John MacLean & Co. as they existed at the time the curator was appointed." (Case, page 87, line 37).

ASSETS AT THE TIME OF ABANDONMENT.

It becomes important to ascertain what the partners themselves regarded as the assets at the time of the abandonment and at the time the curator was appointed. The three partners prepared a statement showing the condition of their affairs. The statement Exhibit C may be found at page 82 of the case. The overdraft referred to is not put down as an asset of the firm in this statement, nor is it included under the heading "Book Debts."

Q. Well, now, coming back to this statement C and the assets of the firm. This overdraft of twenty-nine thousand and seventy-nine dollars and thirty-one cents (29,079.31), was not included in what is entered as book debts?

A. You have every particular there.

Q. But was this overdraft of twenty-nine thousand and seventy-nine dol-

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lars and thirty-one cents ($29,079.31) included in the book debts or assets of the firm?

A. It is all shown up there.

Q. Well, what I am asking you is whether it is put down as an asset of the firm, in the statement in which you stood with your creditors?

A. There was no asset as regards that. Everything was simply wiped out, bodily and entirely.

Q. But in making the offer for your estate, and in making the statement for your curator, you represented according to the statement C certain things which were in stock, certain book debts, certain bills receivable, certain plant, certain amount of money in the Bank of Scotland, and a certain amount of cash on hand?

A. Yes, all these things were explained.

Q. But you had not, either to your assignee or to the creditors in Europe, given in this item that we have been talking of, the overdraft, as an asset?

A. Certainly not. (Case, p. 29, line 29 to p. 30, line 12.)

If it were regarded as an asset of the firm by the partners, it would have been included in this statement. It was not so regarded. Neither was it so regarded by the curator, who agreed in the statement, nor by the bankers who were interested in the estate, nor by the creditors themselves. And though the Appellant pretends in his pleadings that the overdraft was an asset of the co-partnership estate he admits in his examination that it was not treated as an asset in any statement submitted to the creditors, and that in his own judgment there was no asset about it—to use his own language: "There was no asset as regards that." (Case, page 30, line 1.)

As the Chief Justice pointed out, the conveyance to MacLean was simply a conveyance of the assets of the co-partnership, and did not include the assets and liabilities of his co-partners. As regards the creditors the overdraft could not be looked upon as an asset. It added nothing to the rights of the creditors who held each partner jointly and severally liable for the entire firm indebtedness. Properly considered the amount of the overdraft is nothing more or less than a result of the keeping of the accounts between the partners themselves, in order to determine the interest of each partner in the firm from year to year. The methods by which the partners kept their accounts *inter se* was strictly in accordance with the articles of partnership. In addition the partners in practice had assented to it, and no exception was taken to it either before or during the pendency of the present suit. Accounts between partners are simply a "keeping of the reckoning" between themselves so as to enable them the better to adjust their rights and obligations *inter se* at the termination of the business of the firm, either by the lapse of time or by the retirement of a partner or by earlier dissolution. The articles themselves make this perfectly clear and they may be found at page 66 of the case.

THE ARTICLES OF PARTNERSHIP.

By these articles the capital of each partner contributed is to be kept as regards the partners themselves, distinct and separate, and was to bear interest. In other words, the capital was a contribution or an advance toward the

firm for *jouissance* or enjoyment, and in respect of it an accurate reckoning was to be kept. A balance-sheet was to be annually prepared, and the amount of the "share" of each partner accurately ascertained. It was formally agreed that "the balance so established by the said last balance-sheet should be the sole basis of (such) final settlement." (Case, page 67, line 29).

Then there is a formal provision (Case, page 67, line 31) for paying out the capital standing at the credit of each partner in the event of a partner dying before the expiration of five years.

The articles also contain a provision for making advances to each of the partners during the partnership, viz., to MacLean $6,000, and to Stewart and Smith $3,000 each annually. (Case, page 68, line 3). This is clearly an advance or withdrawal, subject to account. The articles contain other provisions in respect to the charging of expenses and the allowing of interest, and it is clear that if these advances were to be treated as in the nature of salary, they would have been included under the head of expenses, but they are not so included, and they were not so treated. They were charged as a debit in the capital account of each partner in each year.

It is clear that this was the proper treatment, as the articles provide that in the event of a partner dying or retiring from the partnership, the amount of his share is determined by the amount to his credit in the last annual balance sheet, "*less all monies actually received by such partner since the date of such balance sheet.*" And the *balance* so established "shall be the sole basis" of settlement. Here the basis of settlement of accounts between partners is clearly defined. Appellant's contention is that he was entitled to withdraw $6,000 annually. There is no doubt that for the time he was entitled to withdraw said sum, but subject to the obligation as provided in the articles that he should account for these withdrawals as between himself and his partners. And here it may be urged that if the Appellant is right in saying that he was entitled to withdraw that sum, then he cannot be indebted to the co-partnership in that sum, and the overdraft could not be regarded as an asset of the co-partnership.

Confusion and Compensation.

Respondent's objections to the Appellant's pleas of confusion and compensation are lucidly and sufficiently stated in the remarks of the Chief Justice.

The amount of the overdraft was not an asset of the co-partnership, and was not treated or regarded as such by anyone. But, even if it were, and had been vested in the creditors, it never was transferred to MacLean, as the actual transfers show. He never, therefore, became, at the same time, his own debtor and creditor, and the plea of confusion must fail.

As to the plea of compensation there is no foundation whatever for it. Appellant simply bought the bankrupt estate of the co-partnership from the creditors at the rate of fifty cents on the dollar on the amount of their total liabilities due to firm creditors. He received money's worth in goods and credits and cash on hand for the amount he paid in the form of composition, and he cannot make the amount so paid avail in the double capacity of satisfying his obligations to his late partners and purchasing the bankrupt stock.

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If he could he would add a new canon to finance and double the value of ready money.

This case must turn upon the construction of the articles of co-partnership and the settled course of dealing between the parties in respect of their capital and mutual liability.

(Lindley on Partnership Book 3, chap. 10, sec. 6, par. 519, page 591.)

Here the accounts were stated, and where the accounts are stated further investigation is unnecessary and superfluous.

"To an action for an account of partnership dealings and transactions an account thereof already stated and settled between the parties affords a good defence. No precise form is necessary to constitute a stated and settled account, but an account stated, unless it be in writing, is no defence to an action for a further account. It is not, however, necessary that the account should be signed by the parties, if it can be shown to have been acquiesced in by them."

(Lindley on Partnership Book 3, chap. 10, sec. 6, par. 512, page 584.)

Referring to the articles of the Civil Code, Articles 1839, provides that "each partner is a debtor to the partnership for all that he has agreed to contribute to it."

In commercial partnerships the partners are jointly and severally liable towards the creditors as follows, Code articles 1103, 1854, 1863 and 1865:—

Under these articles the partners being jointly and severally indebted to the creditors the discharge to one partner would discharge the others without necessity for formal mention of the discharge to them in the deed.

When there is no agreement concerning the shares of the partners in the profits and losses of the partnership they share equally. Civil Code 1848.

There is no intricate question of French law involved in this case. The whole matter is regulated by the Civil Code, Code of Civil Procedure, the articles of co-partnership and the established course of dealings between the partners.

The law of France is in many respects different from the law of Lower Canada in regard to partnerships, and would be misleading unless clearly distinguished. For example, article 1853 of the French Code provides that "when the articles of partnership do not determine the share of each partner in the profits and losses, the share of each partner is in proportion to his share in the capital of the partnership." Whereas under the article 1848 of the Civil Code of Lower Canada: "when there is no agreement concerning the shares of the partners in the profits and losses of the partnership, they share equally."

The following opinions, authorities and decisions upon the French Law are here cited, as they were in the Court of Appeals, and it is submitted that the case of Glady and Martini is a strong authority for the contention that the advances to MacLean were simply temporary, and that the case of Depouilly & Gouin is also a strong authority for the contention here urged on behalf of Respondent that Appellant is bound to account notwithstanding the abandonment in order that the losses of the partners may be equalized.

Article 1853 of the French Code, which is as follows:

"Lorsqu'un acte de société ne détermine point la part de chaque associé dans les bénéfices ou pertes, la part de chacun est en proportion de sa mise dans le fonds de la société."

Pothier Traité du Contract de Société, No. 118, says:

"Chacun des associés doit rapporter à la masse commune, tout ce qu'il a perçu du fonds commun, et il en est par conséquent débiteur envers la société.

Par example, si l'un des associés a tiré de la caisse de la société quelque somme d'argent pour l'employer â ses affaires particulières, il n'est pas douteux qu'il est debiteur de cette somme envers la société."

With regard to the last quotation from Pothier, Guillouard Traité de Société makes the following comment No. 198, commenting on article 1846:

"Les valeurs sociales ne doivent servir qu'à l'intéret de la société, et si, contrairement au but de contrat de société, un des associés fait servir une partie de ces valeurs à son profit exclusif, il en doit indemniser la société c'est à dire ses associés."

"Lorsque les membres d'une société dont le capital devait étre formé de mises égals, ont avant que quelques-unes des mises fussent intégralement versés, fait l'abandon de l'actif social aux créanciers de la société, moyennant une quittance entière et definitive de ceux-ci, l'associé, qui, ayant versé l'intégralité de sa mise, a contribué pour une plus forte part à la formation de l'actif abandonné peut recouvrir contre lés associés en retard de versements pour que la perte soit équilibrée entre-eux tous."

Cassation 1869, D. 69, 1. 467, S. 70, 1. 61, p. 70, 133.

Rapportée dans le C. C. Sirey, sous art, 1845.

"Quant aux pertes, elles se répartissent tout naturellment, lorsqu'elles consistent dans la diminution de fonds commun, puisque chacun se trouve appelé à partager une masse moins considérable. S'il s'agit de charges, aux qu'elles le fonds social entier ne peut suffir, et qui, après qu'il est absorbé, grèvent encore la société, chaque associé en supporte la portion que lui assigne la convention, ou la loi, si la convention est muette."

Duvergier, Droit Civil, vol. 5; Contrat de Société, No. 278.

It was held at Bordeaux, 1st Aug., 1865, Sirey, 1866-2-182, that:

"Les prelèvements que l'acte social autorise les associés à faire mensuelle-
"ment pour leurs besoins particuliers, jusq'ua concurrence d'une somme deter-
"minée, doivent être considérés, non comme définitivement acquis, mais comme
"des *avances* faites à chacun des associés sur ce qui lui reviendra lors du partage
"des benéfices, et dont par suite, il est du compte à la société."

The facts of this case were as follows: Glady and Martini entered into a partnership for the carrying on of the hardware business. Martini put in two-thirds of the capital and Glady one-third. It was stipulated that each could draw out for his personal needs, monthly, any sum not exceeding 400 francs. Upon dissolution of the partnership, and in winding it up, these withdrawals were charged to general expenses, but in signing the statement showing the balances, Martini added to his signature the following words: "Sauf erreur ou omission de quelle espéce qu'elle puissent être." Martini, discovering that

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Glady had withdrawn more than his share of the disposition of the partnership property, owing to the erroneous methods of posting these withdrawals, took action to recover the difference, It was held by the Tribunal de Commerce, whose judgment was adopted by the Court of Appeal, that:

"Attendu que Martini a signé ce règlement avec réserves, et que la fin de non recevoir proposé est dès lors sans valeur;

"Qu'il s'agit donc simplement de rechercher quel est celui, de Martini ou de Glady, qui donne la convention le sens qu'elle a réellement;

"Attendu, aussi, qu'il a déjà été dit, que Martini avait droit a deux tiers dans la société, et Glady seulement un tiers, et que, s'il a été convenu que chacun des associés prélèveraient mensuellement une somme qui ne serait pas audessus de 400 francs pour ses besoins particuliers, il est certain que ces prélèvements n'étaient qu'une avance qui lui était faite sur ce qui devait lui revenir lors du partage des bénéfices, et qu'ils n'avaient rien de définitif; que ce qui prouve qu'ils ne devaient pas être portés en frais généraux, c'est qu'une somme fixé n'a pas été determinée; que Glady l'a si bien compris lui-même *quil n'a pas toujours pris les* 400 *francs qu'il avait le droit de prelever, et que, si les prelèvement eussent dû être definitifs; on ne saurait comprendre une pareille générosité* de sa part; qu'il faut donc interpréter la convention en ce sens que Martini ayant droit a deux tiers dans la société et Glady à un tiers, la commune intention des parties a été que celle qui toucherait plus que la part à elle attribuée dans la dite société, en devrait compte a l'autre."

The following case decided in France has also an important bearing:

DEPOUILLY AND GOUIN.

Les sieurs Depouilly, Gouin & Broyard avaient formé une société en nom collectif dont le capital fixé à 105,000 francs, devait être formé pour un tiers par chacun des associés. Cette société n'ayant pas prospéré, il est intervenu, le 15 Mars, 1862, entre les associés et leur créanciers, un arrangement aux termes duquel l'actif social devait être liquidé au profit des créanciers, sous la surveillance de commissaires désignés par eux. Moyennant cet abandon, les créanciers libéraient entiérement les trois associés. Cette convention ayant été exécutée, le sieur Gouin a réclamé des sieurs Depouilly et Broyard, le complément de leurs mises sociales, s'élévant pour l'un a 6906 francs 60c., et pour l'autre 2300 francs.

Sur cette instance le tribunal de commerce de la Seine a rendu le jugement suivant le 26 Septembre, 1886.

"Sur demande en complément de mise sociale. En ce qui concerne les deux défendeurs.

"Attendu qu'il ne devient pas le chiffre de la réclamation, que Gouin justifie, d'ailleurs, être exact; mais que pour se refuser au paiement, Depouilly et Broyard excipent de ce que la société ayant existé entre eux et le demandeur a été dissoute le 5 Avril, 1862, après abandons fait par les trois associés

à leur créanciers, de tout l'actif social sans en rien excepter, si ce n'est leur mobilier personel, et sous la condition que même en cas d'insuffisance de cet actif pour satisfaire le montant intégrale des créances, ils seraient complétement libérés envers leurs créanciers, quelque fut le résultat de la liquidation:— Qu'ils soutienne que si, à l'epoque de cet abondon, Gouin avait des droits contre eux, en raison de versements inégaux qu'ils auraient pu faire, ces droit faisaient partie de son actif compris dans la masse sociale, dont pour sa part, il s'était, comme eux. desaisi aux profits des créanciers de la societé.—Que Depouilly et Broyard allèguent qu'une action à ce sujet ne pourrait, en tout cas, être exercée contre eux qu'au nom et au profit des créanciers:—Que la liquidation ayant eu lieu, et les créanciers leur ayant donné quittance entière et définitive, Gouin a perdu tout recours contre eux.

Mais attendu que. si l'abandon fait par la société à ses créanciers, l'a libéré vis-a-vis de ceux-ci, cet abandon n'a rien changé aux situations respectives des associés entre eux, et n'a pas détruit le droit que chacun pouvait avoir d'obliger les autres a parfaire leur mise sociale pour rétablir légalité dont le principe avait été posé dans le pacte social;

Attendu qu'il résulte des documents fournis au tribunal que les sommes reclamées sont bien dues par Depouilly et Brayard pour complément de leur mise:—Mais qu'attribuer à Gouin l'intégralité de ces sommes serait le mettre a son tour dans une situation plus favorable que celle des défendeurs; Qu'en raison de ce qui vient d'être dit, il y a lieu d'equilibrer seulement la perte entre eux.

Attendu que Gouin ayant versé dans la société 35,000 f. Broyard, 32,700 fr. Depouilly, 28,033 fr. 40c, le total de ces versements représente 95,733 fr. 40c;—que le capital étant entièrement perdu, la perte égale pour chacun serait de 31,911 fr. 13c.—Que Broyard ayant versé une somme supérieure, Gouin est sans droit pour lui rien réclamer:—Que Depouilly n'ayant versé que 28,033 fr. 40c, Gouin pour diminuer sa propre perte est en droit de lui réclamer 3,088 fr. 87c., a concurrence desquels il y a lieu d'accueillir ce chef de la demande a son egard.

Condamne Depouilly à payer à Gouin la somme de 3,088 fr. 87c."

Mr. Justice Lindley puts down a clear and precise rule for taking partnership accounts.

" Ascertain what each partner is entitled to charge in account with his co-partners; remembering in the words of Lord Hardwicke, that each is entitled to be allowed as against the other, everything he has advanced or brought in as a partnership transaction, and to charge the other in the account with what that other has not brought in, or has taken out more than he ought."

(Lindley on partnerships, Book 3, chapter 10, section 6, paragraph 519, page 591.)

But failing some distinction that should be drawn in respect of the law of the Province of Quebec or the provisions of the articles of co-partnership, or the course of dealings between the parties, it is submitted that Binney and Mutrie decided by the Judicial Committee of the Privy Council in 1886 on appeal from

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the Supreme Court of Honduras must be decisive of this case. The case is reported in Law Reports 12 App., Cas. 165.

In that case the interest of the partners was unequal, being respectively 40 per cent., 35 per cent. and 25 per cent., and each partner was to receive 5 per cent. interest on his capital. In that case the interest was added to capital, as in this case treated as the accumulated capital of each partner for the ensuing year.

"This their Lordships think was a mode of dealing which, if not compelled by the co-partnership articles cannot, at any rate, be called into question now."

In another part of the judgment it is declared that: "Their Lordships do not propose to do anything to disturb a settled account if there is any."

Then their Lordships put down this general principle:

"Their Lordships understand that all claims of persons external to the partnership have been satisfied. That being so, it is clear that the surplus assets should be first applied in paying to each partner his claims in respect of capital. The residue will be profits, and will be divisible as such. *If the assets will not satisfy the sums found due for capital, there* is a loss which must be borne or made good by the partners in the proportion of 40, 35 and 25."

Then their Lordships indicate the order which, in their opinion, the Court of Appeal should have made, viz.:—

"(*a*) Ascertain what amount ought to be placed to the credit, or to the debit, of each of the three partners in respect of the capital of the partnership business on the 1st of February, 1879.

"(*b*) Declare that each partner is entitled to interest at the rate of 5 per cent. in each year on the capital standing to his credit on the 1st of February in that year.

"(*c*)—Declare that, according to the construction of the articles of partnership, whatever profits and interest were contributable to the share of any partner, and were not drawn out by him, are to be credited to him on the 1st of February in each year down to the 1st of February, 1883, as part of his capital in the concern.

"(*d*)—Ascertain what amount of capital is to be credited to each partner on the 31st of January, 1884, according to the foregoing declarations.

"(*e*)—Declare that the surplus assets of the partnership after paying all debts and liabilities, including rents and such costs of this suit as are directed to be paid thereout, ought to be applied in payment of the sums due to each partner in respect of his capital ascertained as aforesaid with interest to the time of payment.

"(*f*)—Declare that if the assets of the partnership will not suffice to pay the amounts of capital ascertained as aforesaid, the deficiency is a loss of capital, and is to be borne or made good by the three partners, in the proportion of 40 shares by the Plaintiff, 35 by the Defendant Mutrie, and 25 by the Defendant Currie, and that, subject to this liability and to the claim of any of the partners against the entire assets to answer it, the assets are to be applied rateably in payment of the amounts of capital.

"(*g*)—Declare that the residue after payment of capital as aforesaid is

divisible as profit into 100 parts, of which 40 are to be paid to the Plaintiff, 35 to the Defendant Mutrie, and 25 to Defendant Currie.

"(*h*)—Let all accounts be taken and inquiries made which are necessary for giving effect to the foregoing declarations or orders, but not disturbing any accounts which may have been settled or matters which may have been concluded between the parties, if any such there be."

According to the ruling of the Chief Justice of the Court of Appeals MacLean would be bound to pay back all his drawings,

Amounting to		$33,560 22
Stewart		8 106 75
Smith		2,971 42
Aggregating		$44 638 39

That sum would be applied to restore the original capital, but as the original capital was $60,124.34 there would be a loss of about $15,485.95 to be made up, and towards this loss, according to the opinion of the Chief Justice, MacLean would be bound to contribute half, Stewart one-quarter, and Smith one-quarter. A calculation on this basis shows that Stewart is entitled to a sum of $13,314.23, instead of $11,213.20 as demanded by him. He therefore did not ask all that he was entitled to.

The same result is arrived at in another way. Disregarding the capital of MacLean which he drew out, the loss of Stewart and Smith is $17,185.72 and $27,379.54 equal to $44,565.26, all of which has been borne by Stewart and Smith, whereas MacLean should have borne half or $22,282.63, and each of the others $11,141.31½.

Again MacLean has had $29,079.31 against nothing to Stewart and Smith. He must therefore account for half or $14,539.65½ of this sum. His obligations therefore would be :

To account for half the loss	$22,282.63
And half the overdraft, $29,079.31	14,539.65½
Which amounts to	$36 822.28½
Now what is Mr. Stewart's share of this?	$36,822.28½
1. He has borne $17,185.72 of the loss, while his quarter is $11,141.31½, and on this head he is entitled to	$ 6,044.40½
2. His quarter of the $29,079.31 is $7,269.82¾	7,269.82¾
Which makes a total due him by MacLean of	$13,314.23¼

Or the same as on the method of returns adopted by the Chief Justice. Both methods bring about the same results. The latter method is that adopted by the Superior Court of the State of New York, sitting in Banc—general term—in the case of Butler vs. Ballard, 43 New York Reports, page 197. Chief Justice Curtis and Justices VanVorst and Friedman constituted the Court. The judgment is unanimous.

To the same effect are Neudecker vs. Kohlberg, 3 Daly, 407; West vs. Skip, 1 Ves. Sen. 239.

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The Superior Court and the Court of Appeals found that all the matters really in controversy between the paries were before the Court. The judgment rendered in the Plaintiff's favor for $10,261.38½, is not so large as that demanded by him iu his declaration, viz., $11,213.20, but it would appear that it is a less sum than he is really entitled to, the calculations showing that if he is entitled to a judgment it should be for a sum of $13,314.23¼.

The judgment appealed from has received the assent of all the six judges of the Province of Quebec to whom the question was submitted. It is in accord with the decision of the Cour de Cassation, the highest Court in France; and with the general term of the Superior Court of the State of New York.

The question has never come squarely before the Supreme Court of the United States, though the principles underlying it were incidentally considered in

Gunnell vs. Bird,
10 Wall (U.S., S.C.R.) 304–308,

on an appeal from the Supreme Court of the District of Columbia.

The decision by the judicial committee of the Privy Council in

Binney vs. Mutrie,
Law Reports 12, App. Cas. 165

is in point, and sustains the judgment of the Court of Appeals, which it is respectfully submitted should be affirmed.

MACMASTER & MACLENNAN,
Attorneys for Respondent..

Montreal, 23rd Jan., 1895.

IN THE SUPREME COURT OF CANADA.

Wednesday, the 26th day of June, A.D., 1895.

Present:

The Honourable SIR HENRY STRONG, Knight, Chief Justice,
" " Mr. JUSTICE TASCHEREAU,
" " Mr. JUSTICE SEDGEWICK.

The Hon. Mr. Justice Fournier being absent his judgment was announced by the Hon. Mr. Justice Taschereau, and the Hon. Mr. Justice King being also absent his judgment was announced by the Hon. the Chief Justice pursuant to the statute in that behalf.

Between

John MacLean,

(Defendant) Appellant,

and

Alexander Stewart,

(Plaintiff) Respondent,

and

James Hardisty Smith,

Mis-en-cause.

The appeal of the above named Appellant from the judgment of the Court of Queen's Bench for Lower Canada (Appeal Side) pronounced in the above cause on the twenty-ninth day of September, in the year of Our Lord one thousand eight hundred and ninety-four, affirming the judgment of the Superior Court for Lower Canada, sitting in and for the District of Montreal, rendered in the said cause on the thirteenth day of May, in the year of Our Lord one thousand eight hundred and ninety-three, having come on to be heard before this Court on the twenty-fifth and twenty-sixth days of February, in the year of Our Lord one thousand eight hundred and ninety-five, in the presence of counsel as well for the Appellant as the Respondent, whereupon and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment this Court did order and adjudge that the said appeal should be and the same was allowed, and that the said judgments of the Court of Queen's Bench for Lower Canada (Appeal Side) and of the Superior Court for Lower Canada sitting in and for the District of Montreal should be and the same were respectively reversed and set aside, and that the action of the Plaintiff against the Defendant herein should be and the same was dismissed.

And this Court did further order and adjudge that the said Respondent should and do pay to the said Appellant the costs incurred by the said Appellant, as well in the said Court of Queen's Bench for Lower Canada (Appeal Side) and in the said Superior Court for Lower Canada, sitting in and for the District of Montreal as in this Court, the said costs distraits in favour of Messrs. Atwater & Mackie, attorneys for the said Appellant.

(Signed) ROBERT CASSELS,
Registrar.

In the Supreme Court of Canada.

No. 39.

Judges' reasons.

The Chief Justice.

The CHIEF JUSTICE—I can see no error in the judgment appealed against; therefore, adopting the reasons assigned by Chief Justice Lacoste in delivering the judgment of the Court of Queen's Bench, I am of the opinion that this appeal must be dismissed.

Fournier, J.

FOURNIER, J.—I concur in the judgment prepared by Mr. Justice Sedgewick in this case.

Taschereau J.

TASCHEREAU, J.—I dissent for the reasons stated by Chief Justice Lacoste. This appeal should be dismissed.

Sedgewick, J.

SEDGEWICK, J.—In my view the appeal must be allowed and that upon three grounds which I shall. as briefly as I can, point out.

I am willing to admit, and it may be taken for granted for my purpose, that had the firm been dissolved in the ordinary way, there having been no judicial abandonment, and had the action been brought for the winding up of the partnership and the distribution of its assets upon the basis of the partnership articles, amongst the different partners, the Defendant ~~Stewart~~ would rightly have been called to pay the amount of the judgment recovered in the present action. But in my view the case here presented is a different one calling for the application of different principles. There is no question here as to the legal consequences which follow upon the judicial abandonment by the members of a partnership of the firm assets for the benefit of its creditors. Such an abandonment transfers to the curator not only the estate and rights of action of the partnership, but also the estate and rights of action of each member of that partnership. It may be that theoretically the property still remains in the firm or in its several members, but all right of action in respect of it passes over exclusively to the curator, their right of action for the time being ceasing. The claim now in suit, if a valid one, was a right of action which the Plaintiff had against MacLean at the time of the dissolution, and passed by virtue of the abandonment, and subsequent proceedings to the curator. In my view that right of action so transferred and vested in the curator has never yet been retransferred to the plaintiff. It went from him by operation of law. It has never been restored either by operation of law or by any act of any person qualified or authorized to make such restoration. In the present case the abandoned property was in effect purchased by the defendant MacLean, but assume that no such transaction had taken place and that the insolvent estate had been wound up under the Code by the Curator, and distributed by him as therein directed, in that case it could not, I think, be contended that Stewart could proceed by action and recover for his own benefit the amount now in controversy. If MacLean, out of his private or separate estate was able to pay that money, the curator, and not Stewart, would have been entitled to it for distribution among the joint creditors of the firm after the separate creditors of Stewart had first been paid in full. By what act or under what law did this money, which otherwise would have belonged to the creditors, become the

property of Stewart? Although, it is true, the creditors have discharged Stewart, the consideration for that discharge was not the transfer to him individually or to the firm of his or the firm's property and right of action. So as far as he was concerned he was discharged but the property and rights which by the abandonment went to the curator still remained outstanding in the curator who alone might sue in respect of them. I am unable to see how the purchase by MacLean, on his own account, and (we must assume) with his own money, from the curator of the abandoned property could vest in Stewart any right of action. One effect of the abandonment was to dissolve the firm. From that moment the partners became strangers. Their existing liabilities and obligations toward each other doubtless remained unimpaired, but each individual had thereafter a right to do business on his own account and for his own benefit without reference to any of his late associates. MacLean, therefore, had as much right to purchase the firm assets as any stranger, and was in no sense acting in the getting back of the estate as an agent or for the benefit of Stewart, and its transfer to him, viewed as a transfer simply, could not in any way that I can perceive enure to Stewart's benefit. Indeed, if Stewart's right of action had passed over to the curator it makes no difference whether the curator himself realized the assets and made distribution of their proceeds or whether he sold them; so long as there was no transfer from the curator to the three partners or to himself he had no right of action.

The learned Chief Justice of the Queen's Bench, while admitting to the fullest extent that the abandonment transferred to the curator, not only the firm's rights but the rights of Stewart as well, argues that because there was a composition and discharge, that is to say, because the creditors discharged the members of the partnership in consideration of which MacLean, one of the partners, pledged himself to pay the composition, "the partners regained the exercise of their personal rights which the abandonment had taken from them."

With all respect I must differ from this view. There was no composition and discharge in the ordinary sense in the present case so far as Stewart was concerned. There would have been had each member been discharged; had they each undertaken to pay the composition, and had there been a transfer to the three of the abandoned estate. But here, Stewart got his discharge, nothing more. If it gave him the right to recover any private debts of his own, to recover the very claim in question, it would, it seems to me, have given him the right in common with his two late associates to recover the debt due the firm, a position which is manifestly without foundation. I repeat, the discharge of a debtor under the Code of Civil Procedure operates as a discharge only and does not bring with it, as incidental thereto or otherwise, any right of action which he may have had before abandonment. I am, therefore, of opinion for this reason that the action should have been dismissed.

There is, however, another ground upon which I think the Plaintiff must fail. As already stated, the effect of abandonment by operation of law was to transfer to the curator all the property and rights of the firm as a firm, and of each individual member of it. The transfer from the curator to MacLean was intended to give to MacLean every asset which, under the abandonment, had

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No. 39. Judges' reasons. Sedgewick, J. *continued.*

been vested in the curator, and in my view the transfer of the 6th November, 1891, from the curator to MacLean, gives full effect to that intention. The order of the Superior Court of the 13th October, 1891, authorized the curator "to transfer the assets and estate generally of the said firm to the said John MacLean," and the instrument of transfer purports to transfer and make over unto the said John MacLean "all the assets and estate generally of the said late firm of John MacLean & Co. as they existed at the time the said curator was appointed."

It would be unreasonable to suppose that there was an intention, either on the part of the Court authorizing the transfer or on the part of the parties themselves, that while what might be termed the partnership assets were to be affected the individual assets of the partners were still to remain outstanding in the curator, and it is doing no violence to the language of the instrument to hold that the expression, "all the assets and estate generally of the said late firm John MacLean & Co. as they existed at the time the said curator was appointed," included the separate estate of the individual partners, as well as the joint estate of the partnership itself. That, I think, is the proper construction to give the instrument. It would follow, therefore, that inasmuch as the claim now sued on was a right of action which Stewart had at the time of the abandonment, it was a right of action which became vested in MacLean by virtue of the transfer. It may be, and the learned Chief Justice throws out a suggestion to that effect, that the rights of the partners *inter se* were not clearly and distinctly in contemplation when the final arrangements were being made. It is clear, however, to my mind that MacLean, in offering to pay a composition to his creditors, never contemplated that he would be obliged to pay in full any indebtedness from himself to his co-partners. If such had been the intention there should have been a clear indication of it in the instrument itself.

There is a further ground which, in my view, necessitates the allowance of this appeal. As I have already stated, MacLean, as the purchaser of the firm assets as between himself and Stewart, must be deemed to be a stranger. Supposing a real stranger, one who had never had any relations whatever with the firm, had purchased the estate and paid off, whether by a composition or in full, the claims of every creditor, he would thereupon as a result become possessed of all the rights of such creditors, as well as of the curator himself. In other words he would become subrogated to their rights. In my view MacLean occupies exactly the same position, having liquidated all the partnership debts with his own moneys the debts which before were due from the firm to the creditors became due to him personally. So far as Stewart is concerned it makes no difference whether MacLean paid fifty or one hundred cents on the dollar. MacLean becomes in effect a creditor of the firm, not for the amount of the composition paid by him, but for the full amount of the indebtedness which that composition represented. The evidence does not, I think, show the exact amount of money which as a matter of fact MacLean did pay. It does show, however, that the firm's direct and indirect liabilities on June 30, 1891, were $281,346.41, of which the direct liabilities amounted to $164,935.91. Assuming this statement to be correct, and that he paid off this latter sum (which he in some way must have done),

he would be deemed a creditor of the firm for that sum, and not, as I have already stated, for the amount he paid in liquidation of it. Now when this action was brought MacLean had either paid or was under an obligation to pay, that indebtedness. And when Stewart, in this action, said in effect to him:

"You, MacLean, at the time of the dissolution of the firm had not only withdrawn from it your original capital, but $29,079.31 as well, pay me my proportion of that overdraft."

MacLean had a right to reply, as he has in effect replied:

"It is true that I had overdrawn to the extent you mention at the time of the dissolution, but since that date I have refunded it five times over. I have paid out of my own pocket (it does not concern you how) $164,935.91 to the creditors of the firm, and if there is to be litigation between us it is from you and not from me that payment is to come."

Stewart may reply, and does reply:

"Yes, but for that payment you got in consideration the assets of the firm. 'Assets,' you admit in reply, 'representing in value only fifty per cent of the liabilities. I have more right to hold you responsible for your proportion of the difference between the value of these assets and the amount of the debts I have paid than you have to call upon me for a dollar."

This supposed conversation, I think, correctly represents the legal position of the parties, and it shows at least that the state of the accounts, as they appeared from the partnership books, affords no indication as to the rights of the parties as they existed when MacLean got his transfer and paid off the partnership debts. It further gives strong force to the argument of Appellant's counsel that the action was wrongly brought and that the procedure prescribed by article 1898 of the Code should have been followed.

On the whole, I am of opinion that the appeal must be allowed and the action dismissed, the Appellant to have costs in all the courts.

King J. I am of opinion that this appeal should be allowed with costs, and the action dismissed with costs in the Superior Court.

King, J.

No. 40.
Statement of Appellant MacLean's position filed by his counsel at the argument in the Supreme Court.

Respondent claims that after the composition, and the retransfer, and the discharge granted to Appellants, such as it was, there remained a debt due to him.

We claim, on the other hand, that both by reason of the composition and transfer, and by reason of the discharge, there remained no debt.

Now to test the pretentions of both parties let us suppose the following case:

Appellant effected with the curator the composition in question, except that he did not stiplate for the discharge of his co-partners, but stipulated his own discharge.

And let us suppose also that there was no private creditors of either Stewart or Smith.

If there remained a debt due by Appellant for the $29,000, it must have been enforceable by somebody. Was it by Stewart or Smith, who never obtained their discharge? evidently not; was it by the creditors of the firm through the curator, or otherwise, not any more since they have granted a discharge to Appellant.

It then necessarily follows, that either by reason of the composition and transfer, or of the discharge granted to Appellant, the debt which had theretofore existed for $29,000 was extinguished.

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No. 41. Certification of Documents by Registrar of Supreme Court of Canada, 19th May, 1896.

In pursuance of an order of Her Majesty the Queen, made by and with the advice of Her Majesty's Most Honourable Privy Council on the thirteenth day of August, 1895 :

I, Robert Cassels, Registrar of the Supreme Court of Canada, hereby certify that the printed document contained in the foregoing Record of Proceedings, from page 1 to page 132 inclusive (the said documents having my signature on each page thereof respectively for the purpose of more effectually identifying the same) is a true copy of the Record and Proceedings in a cause lately pending in the Supreme Court of Canada, wherein John MacLean was Appellant, Alexander Stewart was Respondent, and James Hardisty Smith was mis-en-cause, on an appeal from the Court of Queen's Bench for Lower Canada (Appeal Side)

Dated at Ottawa this nineteenth day of May, A.D. 1896.

ROBERT CASSELS,
Registrar of the Supreme Court of Canada.

In the Privy Council.

ON APPEAL FROM THE
SUPREME COURT OF CANADA.

BETWEEN

ALEXANDER STEWART,
Appellant.

AND

JOHN MacLEAN,
Respondent.

AND

JAMES HARDISTY SMITH,
Mis-en-Cause.

RECORD OF PROCEEDINGS.