

MERCHANTS BANK OF CANADA *v.* McLACHLAN. 1893

MERCHANTS BANK OF CANADA *v.* McLAREN. *Oct. 10, 11.

Partnership—Dissolution—Married Woman—Benefit conferred on wife during marriage—Contestation—Priority of claims.

1894

*April 2.

APPEALS from the decisions of the Court of Queen's Bench for Lower Canada (Q. R. 2 Q. B. 431) reversing the judgments of the Superior Court which had maintained the contestations of the respondent's claims in each action.

On the 10th April, 1886, John S. McLachlan, a retired partner from the firm of McLachlan & Bros., composed of the said John S. McLachlan and William McLachlan, his brother, agreed to leave his capital, for which he was to be paid interest, in a new firm to be constituted by the said William McLachlan and one William Radford, an employee of the former firm, and that such capital should rank after the creditors of the old firm had been paid in full. The new firm

* PRESENT :—Sir Henry Strong C.J. and Fournier, Taschereau, Sedgewick and King JJ.

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 MERCHANTS name up to 31st December, 1889. John S. McLachlan  
 BANK OF died on the 18th November, 1886. Mrs. Annie Mc-  
 CANADA Laren, the wife, separate as to property of John S. Mc-  
 v. LACHLAN had an account in the books of both firms,  
 MERCHANTS On the 16th April, 1890, an agreement was entered  
 BANK OF into between the new firm of McLachlan Bros. and the  
 CANADA estate of John S. McLachlan and Mrs. McLachlan, by  
 v. which a large balance was admitted to be due by them  
 MCLAREN. to the estate of John S. McLachlan and to Mrs. John  
 S. McLachlan. The new firm was declared insolvent  
 in January, 1891. Claims having been filed  
 respectively by Mrs. John S. McLachlan and the  
 executors of the estate of John S. McLachlan against  
 the insolvent firm, the Merchants Bank of Canada con-  
 tested the claims on the following grounds, *inter alia* :  
 1st, that they had been creditors of the firm and con-  
 tinued to advance to the new firm on the faith of the  
 agreement of April, 1886 ; 2nd, that Mrs. John S. Mc-  
 Lachlan's moneys formed part of John S. McLachlan's  
 capital, and 3rd, that the dissolution was simulated.  
 (See also report Q. R. 2 Q. B. 431).

The Supreme Court reversed the judgment of the Court of Queen's Bench for Lower Canada (appeal side) restoring the judgment of the Superior Court, Fournier and King, JJ., dissenting, and held, that the dissolution of the partnership was simulated ; that the moneys which appeared to be owing to Mrs. John S. McLachlan after having credited her with her own separate moneys were in reality moneys deposited by her husband, in order to confer upon her during marriage, benefits contrary to law, and that the bank had a sufficient interest to contest these claims, the transaction being in fraud of their rights as creditors.

*Appeals dismissed with costs.*

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

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