

these shares, which have been sequestrated during all these years, without doing injustice to one or other of the parties; we therefore say this, the rule which has been adopted from convenience does not apply here. These eight shares have never really been mixed up with the property of either party; but, by the operation of the sequestration, they have remained to be dealt with in the same condition as at the time of the *partage*, and therefore they should be divided in the same manner they ought to have been divided by the *partage*, that is, six should go to the appellant and two to the respondent.

The judgment, therefore, will be reversed, with costs, for respondent's *débat de compte* is unfounded, and it appears he has overdrawn his account to a much greater amount than anything coming to him from the \$9000.

The following is the judgment of the Court:—

"The Court, etc.

"Considering that by an *Acte* passed before Griffin, notary public, on the 19th of March, 1869, the appellant and respondent declared to have formed a partnership as brokers, beginning from the 24th of February, 1869, including the negotiation of loans and other monied transactions, as well as the purchase and sale of mines, and the formation of companies; the profits in the ordinary transactions, as brokers, to be divided in the proportion of two-thirds for the respondent and one-third for the appellant, and those resulting from the sale of mines or mineral interests and from the formation of companies, to be divided in the proportion of three-fourths for the appellant and one-fourth for the respondent, which co-partnership was dissolved on the 2nd of November, 1871;

"And considering that during the existence of the said co-partnership, the appellant, with the aid of one Alexander McEwan, obtained in his own name but for the benefit of the co-partnership, a promise of sale of the franchise and mining rights of "The Montreal Mining Company," it being understood that the said Alexander McEwan should have one-half of the profits to be derived from said transaction:

"And considering that on or about the 2nd day of September, 1870, the appellant trans-

ferred his rights in the said "The Montreal Mining Company" to Alexander H. Sibley, acting for himself as well as for others his associates;

"And considering that the profits realized by the said sale consisted in 160 parts of 1600 parts or shares in the Association termed "The Canada Lands Purchase Trust";

"And considering that in or about the month of December, 1870, the appellant sold 80 of the 160 parts or shares by him obtained in the said "Canada Lands Purchase Trust" for the sum of \$9,000, and that on the 21st day of February, 1871, the respondent instituted an action against the appellant in the Supreme Court, New York, by which he alleged that appellant had realized \$22,500 of profits by the said negotiation and sale of mining lands, and claimed that the appellant be condemned to pay him the sum of \$11,250 as his share of said profits;

"And considering that with a view to settle their difficulties with regard to said transaction and suit, the said appellant on the 3rd day of March, 1871, agreed to transfer and did transfer unto the respondent the 80 parts or shares remaining out of the 160 parts or shares in the "Canada Land Purchase Trust," which he had obtained by the transfer of said mining lands and rights, 40 parts or shares out of the 80 the said respondent agreed to transfer unto Miss Auldjo, the remaining 40 parts being in full for his proportion of the profits derived from said transaction;

"And considering that at the time of the said transfer of the said 80 parts in the Canada Lands Purchase Trust by the appellant to the respondent, the said respondent agreed, by a letter dated the 3rd day of March, 1871, that the said 40 parts or shares so transferred to him for his share of profits in said transaction, should be liable in the same proportion to the whole of the parts or shares originally held by the appellant in the said company for any damage which might result to the appellant by reason of any suit which the said Alexander McEwan might institute against him for failure to secure his interest, or any expenses incurred in the negotiations of the sale of the property;

"And considering that the said transfer of