

to other properties than those in question (para. 10 of the solicitor's affidavit).

The appeal from that order is on the ground that the detailed investigation of accounts will not be entered upon at the trial, but will be a matter for reference. It is urged that on the face of the agreement there is *prima facie* a right to claim that an account be directed—whatever the outcome may be in the Master's office.

It should be left for the trial Judge to say how far the details are to be entered upon before him or whether at the outset a reference should be ordered. It appears to me obvious that the right course would be to grant relief by directing the accounts to be taken with a view of ascertaining, upon an inquiry before a judicial officer, whether there are divisible net profits or not. This relief the plaintiff asks at his own risk and costs if it proves a fruitless quest.

As I read the agreement, this method is conformable to the expressed understanding of the parties: it speaks of net profits "which may be or may have been received" (i.e., going back to November, 1908): clause 1. In clause 2 the defendants agree to account "from time to time," and that such accounting shall include all receipts and expenditures, etc. I do not read that this accounting is dependent upon a sale being made or that it depends on the pre-existence of net profits. But in fact a sale has been made at an apparently large price, and this is the first application to have any accounting on the part of the plaintiff—though the account is to go back to November, 1908.

The law is rightly stated in Lindley on Partnership, 8th ed., p. 569: "An agreement to pay out of profits confers a right to an account; and servants entitled to a share of profits can maintain an action for an account of them."

The practice in such an action is well-settled. In a suit for an account "the only question at the original hearing is, whether the defendant is an accounting party." At that stage the Court will not load the suit "with an immense mass of evidence relating to the particulars of an account, into the consideration of which the Judge cannot enter at the hearing:" Walker v. Woodward (1826), 1 Russ. 107, 110.

These authorities indicate the proper course, as it seems to me, and, in view of them, I cannot uphold the order of the Master.

I would reverse that order and allow the action to go on to trial in due course. Costs of motion and appeal to be in the cause.