

monthly, but not to be on any outstanding accounts, should there be such." Either party was to have the right to terminate the agreement upon three months' notice in writing, and "the employer shall have the right to terminate same at any time without notice on account of any misconduct of the employee." Washburn accordingly conducted the business as manager till his last illness, which terminated in his death on the 8th March, 1913. Thereafter the defendant conducted the business himself until May, 1913, when he sold out.

The plaintiff is the widow and administratrix of Washburn, and she, on the 2nd August, 1913, began this action, in which she claims an account of the partnership dealings between Wright and Washburn and a winding-up of the partnership under the direction of the Court; that for these purposes all proper directions be given and accounts taken; and she adds a prayer for general relief. The defendant pleads that the terms of the agreement have been complied with, sets out a statement of the account between him and Washburn in extenso, and says he furnished this to the plaintiff before action, and counterclaims for \$585.41. The plaintiff joins issue.

Though the formal judgment, through some negligence or misapprehension, directs an account of the "partnership dealings between Benjamin Washburn and the defendant," the learned Judge expressly finds that there was no partnership (5 O.W.N. at p. 516). In this he is undoubtedly right: the statute (1910), 10 Edw. VII. ch. 73, sec. 3(1) (a), is perfectly plain.

That being so, sec. 3 (2) admittedly applies, and the statement by the employer is final and conclusive, and unimpeachable upon any ground whatever except fraud. The learned Judge has found fraud—in my opinion wrongly. No fraud is charged; the statement is set up . . . as a defence, and this is not met by a reply of fraud. We have recently said, "It is not too much to require any one who intends to charge another with fraud . . . to take the responsibility of making that charge in plain terms:" *Caldwell v. Cockshutt Plow Co.* (1913), 5 O.W.N. 589, at p. 596, citing *Low v. Guthrie*, [1909] A.C. 278; *Badenach v. Inglis* (1913), 4 O.W.N. 1495, 29 O.L.R. 165; and the person making the charge is confined to the particular fraud charged: *Medcalf v. Oshawa Lands and Investments Limited* (1914), 5 O.W.N. 797, per *Boyd, C.*, with whom *Middleton, J.*, agreed. . . .

Even if the plaintiff should get over this difficulty, we find