

with Day, J., who tried the case, that having regard to the provisions of the bond, the agreement with the new company afforded no defence to the plaintiffs' action. The question whether, in any case, a surety can be released from liability to contribution by reason of his co-surety giving time to the principal is referred to but not decided. Smith, L.J., says, at p. 320: "I have never before heard of defences which would be defences by a surety against a principal creditor being attempted to be set up in a case of sureties suing a co-surety for contribution, and no authority has been cited to show that this can be done."

REPORTS AND NOTES OF CASES

. Dominion of Canada.

SUPREME COURT.

Ont.]

WEST v. BENJAMIN.

[Dec. 14, 1898.

Partnership—Accounts—Settled and settled account—Estoppel—Managing partner.

One of the two partners constituting a firm had the sole management and control of its affairs, the other lacking business capacity. The managing partner at intervals presented statements of the business to his co-partner who signed them on being assured of their correctness, and in 1891 mutual releases of all claims and demands were executed by each, based on the statements so furnished by the active partner. In an action against the latter to have these releases set aside and the accounts re-opened, it was found at the trial, on the evidence of an accountant who had examined the books of the firm, that a large loss would result to the plaintiff if the accounts were maintained as settled, and he referred it to a master to take the accounts. On appeal from his judgment the reference was restricted to certain specified items.

Held, reversing the judgment of the Court of Appeal and restoring that of the trial judge, but varying it so as to make the inquiry begin at a date beyond which the plaintiff did not desire to go, that all it was necessary to establish in order to set aside the releases pleaded and to open the accounts was that in the accounts as settled there were such errors or mistakes as would inflict material injustice upon the plaintiff if the accounts should be held to be closed.

Aylesworth, Q.C., and Mudden, for appellant. Clute, Q.C., and Masten, for respondent.