

if the actual owner of the business, should be liable for its whole indebtedness. I think the conduct of the parties during the three years and a half and the written records of their transactions shew that no such results were in their contemplation.

Quite independently of the consequences of the judgment, I am of opinion, with very great respect, that by the evidence of Cockburn, supported as it is by the conduct of all the parties who were from time to time in actual possession of the property, and having regard to the books kept by them and all the recorded acts of ownership, and to the entire absence of the element of estoppel, the case made by plaintiffs is completely displaced, and that the judgment should be set aside and the action dismissed with costs.

---

MAGEE, J.

DECEMBER 11TH, 1906.

TRIAL.

RYAN v. PATRIARCHE.

*Arbitration and Award—Submission to Arbitration—Time for Making Award—Power of Arbitrators to Extend—Failure to Exercise—Action for Account—Defence of Arbitration Pending—No Answer to Action.*

Action by Peter Ryan against P. H. Patriarche for an account of moneys received by defendant under a contract for the construction and installation of an electric light plant for the town of Orillia, in which plaintiff alleged he had an interest under certain agreements with defendant. Defendant set up certain arbitration proceedings as an answer to the action.

R. D. Gunn, K.C., for plaintiff.

J. E. Day and J. M. Ferguson, for defendant.

MAGEE, J.:—It is conceded that this would be a proper action in which to direct a reference were it not for the arbitration proceedings. The submission was dated October, 1904, and was under seal, and bound the parties to abide by the award so as it was made on or before 30th October, 1904, or any subsequent day to which the arbitrators should by writing extend the time.