the plaintiff said that the later agreement was "substituted and palmed off on the plaintiff." This formulated the real issue between the parties; for, if the second agreement was valid, the first, whatever had been its terms, must necessarily be regarded as at an end.

The learned Judge said that he entirely agreed with the judgment of FALCONBRIDGE, C.J.K.B., and had little to add. He referred to Patmore v. Colburn (1834), 1 C.M. & R. 65; and said that how, in the circumstances, while adhering or being compelled to adhere to the second agreement, there could remain to the plaintiff any claim under the first, was beyond comprehension.

The appeal should be dismissed with costs.

HODGINS, J.A., agreed with the judgment of GARROW, J.A.

MAGEE, J.A., read a judgment in which he set forth the facts at length and referred to the evidence. He concluded by saying that the plaintiff voluntarily broke the new agreement, and so could not claim a full quarter share. He could not ask to have the partnership assets now realised, for the defendant was entitled to use them till July, 1916. But the plaintiff was and is entitled to an account of the partnership profit and the defendant's disposition thereof. The defendant denied and continued to deny his right to that. The plaintiff was, therefore, entitled to bring his action to have that account, and to have it declared that, subject to the defendant's right to the use of the plant and premises during the two years, he was entitled to an interest in the goods in common with the defendant, to the extent of their respective contributions to the capital, and to one fourth of the surplus realised.

There should be no costs up to judgment, but the plaintiff should get his costs of the appeal; and further directions and the costs of the reference should be reserved.

MACLAREN, J.A., agreed with the conclusion of MAGEE, J.A., for reasons briefly stated in writing.

The Court being divided, appeal dismissed.