

PARTNERSHIP—LOAN IN CONSIDERATION OF SHARE OF PROFITS—POSTPONEMENT TO OTHER CREDITORS ON BANKRUPTCY OF PARTNERSHIP.

In re Fort, (1897) 2 Q.B. 495, although turning upon the construction of the English Partnership Act (53 & 54 Vict., c. 39) may probably be nevertheless an authority in Ontario—that Act being regarded in the main as merely declaratory of the common law. The Court of Appeal (Lord Esher, M.R., and Smith and Rigby, L.JJ.) determine that under the Act where one person advances money to another upon an agreement that the lender shall share in the profits of the business of the borrower, in the event of the borrower becoming bankrupt the lender is postponed to the other creditors of the borrower. The agreement in question was by parol, and an argument was made that under the Act it was only where such contracts are in writing that the postponement takes place. Such a question, however, is obviously not open under Ontario law, and the provisions of the English statute requiring such agreements to be in writing in order to protect them from being regarded as constituting the lender a partner, goes beyond the common law and cannot be considered as authoritative here.

CONSENT ORDER, ACTION TO SET ASIDE—MISTAKE—UNILATERAL MISTAKE INDUCED BY OPPOSITE PARTY—SETTING ASIDE CONSENT ORDER

Wilding v. Sanderson, (1897) 2 Ch. 534, was an action to set aside a consent order made in a case of *Ainsworth v. Wilding*. An unsuccessful motion in that action to set aside the order in question is reported (1896) 1 Ch. 673, (noted ante vol. 32, p. 471.) The Court of Appeal (Lindley, Lopes and Chitty, L.JJ.) affirming Bryne, J., held that an order made on consent in an action may be set aside even after being entered, and partially acted on, and construed by the Court on the same grounds that an agreement inter partes can be set aside. And in the present case the order was set aside on the ground of a mistake by the plaintiff, innocently induced by the opposite party, as to the meaning of its terms, such unilateral mistake constituting an exception to the general rule of equity that a contract cannot be set aside on the ground of mistake where the mistake is unilateral.