COURT OF QUEEN'S BENCH.

MONTREAL, Dec. 21, 1880.

Sir A. A. DORION, C.J., MONK, RAMSAY, CROSS, BABY, JJ.

KANE (plff. below), Appellant, and WRIGHT et al. (defts. below), Respondents.

Contract—Partnership interest.

The appeal was from the judgment of the Superior Court, Montreal, Johnson, J., Sept. 30, 1878, dismissing the appellant's action. See 1 Legal News, p. 482, for the judgment of the Superior Court.

RAMSAY, J. I hope this case is a peculiar one. It is certainly interesting in a sense, for it has all the machinery of a sensational novel—plot and counterplot. The Harbor Commissioners of Quebec, having extensive works to do, advertised for tenders. With official precision, the full details were set forth in the advertisement; the day and very hour in which the sealed tenders should be sent in were specified. Nothing could look more fair and above board, but at the very moment that all this was going on, it was perfectly known in certain circles in Quebec that Mr. Peters was to get the work. Among those who were aware of this were the respondents in this case, and in the afternoon of the day on which the tenders were lodged, that is on the first of February, 1877, they divulged to Mr. Peters the rate they had charged for dredging. This, of course, is denied, but there is no escape from the conclusion as to what must have taken place by the result. First, it is admitted that prices were given. Secondly, immediately afterwards the Harbor Commissioners asked for supplementary tenders. Peters tendered anew; Moore, Wright & Co. tendered anew; and the contract which was really executed was in favor of Peters, Moore and Wright. We are now asked to believe that there was no connivance between the Harbor Commission and Peters; that Moore & Wright, not being able to obtain the whole contract for Moore, Wright & Co., were perfectly entitled to take a sub-contract from Peters, and that that was all they had done, and that the contract had really been accorded to Peters, and that their names had been inserted afterward, when the formal document had been drawn up, as a matter of convenience, and that, in effect, they had only to do with a portion of the contract.

If this extraordinary and improbable story were true, it seems to me that it would not mend the matter, so far as the respondents are concerned. They evidently were the agents in this transaction of their co-partners, and they couldn't make a contract as to any portion of these works behind their partners' backs, and therefore they are obliged to render an account of their gains on this contract for one share to the appellant.

They might have been coerced to this by one action to account after the whole work was done, or by periodical actions during the progress of the work. The appellant has taken the least advantageous course for himself, probably because he did not wish to be involved in tedious litigation, and so he has rendered the proof of his case rather difficult. The Court has assessed his damages at $2,500. In this judgment I concur, as I think there is some evidence to show that the appellant's share of the gain would have been at least as great as this. I may add, on the question of Moore & Wright's liability, that during the whole period of the negotiations with Peters they were entertaining Kane & Macdonald with the idea that they were acting for them. When the new tenders were called for, they called it a fraud, said it was "too thin to wash," and that they would "warm" some one, probably "that engineer" at Quebec. In reality, they had provided a warm place for themselves, by getting two thirds of the contract with Peters, instead of one-half with Kane & Macdonald. After the bargain with Peters was complete, they went through the farce of tendering Kane & Macdonald a share in their contract; and when they wrote to accept, they answered they had made other arrangements. What these other arrangements were has never been disclosed, and it is not of much matter to anybody what they say on the subject. Their conduct shows the grossest bad faith, and I only regret there is not sufficient evidence to enable the Court to make them pay more sharply than they will have to do under this judgment.

The judgment is as follows:—

"Considering that it is proved that the appellant, the respondents, and Angus P. McDon-