vegetable existence in that locality would suffer to a material extent.

Having regard to the constitution of the suit and to the failure of the plaintiff to prove any special damage except as to the cow, and having further regard to the evidence of the defendants that no appreciable damage can or will result from the smelter as now equipped and operated, unless it be the result of accident, I arrive at the same conclusion, after consideration, as I expressed at the close of the evidence and the argument, viz., that the plaintiff should recover damages to the extent of $80 for the cow, with costs of action on the lower scale and no set-off; but as to the injunction no order is made. This disposition of the main matter, however, to be without prejudice to further litigation in that respect, should circumstances justify it.

HON. MR. JUSTICE LENNOX. DECEMBER 15TH, 1913.

WASHBURN v. WRIGHT.

5 O. W. N. 515.

Master and Servant—Sharing of Profits—Action for Declaration of Partnership and Accounting—Master and Servant Act—10 Edw. VII. c. s. 3, s.-s. 2—"Statement or Return"—Meaning of—Evidence—Fraud—Reference.

LENNOX, J., gave judgment for plaintiff for an accounting in an action brought by the administratrix of the manager of a business against the proprietor under a contract whereby the profits were to be shared between them, holding that the facts did not bring a statement furnished by the defendant within the provisions of sec. 3, s-s. 2 of the Master and Servant Act 1910, so as to protect it from attack and that in any case it was fraudulent within the meaning of that Act.

R. R. McKessock and G. M. Miller, for plaintiff.

R. McKay, K.C., and Joseph Fowler, for defendant.

Action by plaintiff as administratrix of the estate of her husband Benjamin Washburn, for a declaration of partnership and an account, the action being founded upon an agreement dated July 2nd, 1911, for the carrying on of a semi-ready tailoring business in Sudbury, in which the defendant was described as the employer and Washburn as