

the force of this contention if the letters had been written by one stranger to another, written as they were by a wife to her husband the expressions relied upon mean no more than that her husband was interested in the ventures, just as any husband is interested in the ventures of his wife, and are not to be taken to indicate that the respondent was treating her husband as having any proprietary interest in the claims.

It was also contended that in giving her evidence before the Commissioner the respondent admitted the right of her husband to a share in the claims; but that is not the effect of her evidence. She did not admit any right of her husband to a share, but conceded that he had a moral right to a share, and said that she was willing to give him an interest, if the interest were so settled that he could not waste it, and if provision were made that she should have the control of the disposition to be made of the claims—a prudent safeguard, I think, in view of the habits of the appellant. That offer was not accepted, and is, of course, not binding on the respondent.

*Appeal dismissed with costs.*

DECEMBER 7TH, 1914.

\*LIVINGSTON v. LIVINGSTON.

*Partnership—Account—Profits of Separate Business Carried on by one Partner—Assent of other Partner—"Competing" Business—Sale of Property of Firm after Death of one Partner—Purchase by Trustee for Surviving Partner—Adequacy of Price—Liability to Account for Profits on Resale—Allowance to Surviving Partner for Services in Liquidation—Trustee Act, sec. 40—Trustee—Express Trustee.*

Appeal by the plaintiffs and cross-appeal by the defendant from the order of MIDDLETON, J., 26 O.L.R. 246, 3 O.W.N. 1066.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGÉE, and HODGINS, J.J.A.

Wallace Nesbitt, K.C., H. S. Osler, K.C., and Christopher C. Robinson, for the plaintiffs.

I. F. Hellmuth, K.C., and J. H. Moss, K.C., for the defendant.

\*To be reported in the Ontario Law Reports.