

account. The defendant had, from the beginning, followed the practice of paying his own money into the firm so as to improve its position financially and to allow it the use of the money.

*Held* (CAMERON, J.A., dissenting), applying s. 22 of R.S.M. 1902, c. 129, that the course of dealing between the partners had been such that there should be inferred from it a consent of all the partners that their mutual rights and duties, as defined in sections 24 and 32 of the Act, should be varied so as to allow the defendant full liberty of action in respect of any funds which he would have been entitled to withdraw on a division of the profits, that the entries in the books had been made as they were only for convenience and not as shewing partnership transactions, and that the plaintiffs had no right to share in the profits of speculations clearly intended by the defendant as private ones of his own. *Ex parte Harris*, 2 V. & B. 210, followed. *Helmores v. Smith*, 35 Ch. D. 456, distinguished.

The contrary intention, which, by s. 24 of the Act, would prevent property bought with money belonging to the firm from being deemed to have been bought on account of the firm, sufficiently appeared from the evidence.

Per PERDUE, J.A.:—1. The intention to be considered in this case is that of the defendant alone, and it is not necessary to shew that it must be that of all the partners. *Ex parte Hinds*, 3 De G. & Sm. 613, followed.

2. The plaintiffs had constructive notice or means of knowledge of what the defendant was doing and their consent may be implied from that: *Ex parte Yonge*, 3 V. & B., p. 36.

*Minty* and *C. S. Tupper*, for plaintiffs. *O'Connor* and *Isbister*, for defendant.

Full Court.]

[Feb. 13.

TORONTO GENERAL TRUSTS CORP. v. DUNN.

*Automobile—Negligence—Liability of driver for injury to pedestrian—Burden of proof—Contributory negligence.*

The administrator of the estate of Andrew McKay brought this action under the Act respecting Compensation to Families of persons killed by accident (R.S.M. 1902, c. 31), claiming damages on behalf of certain relatives of McKay who, when walking across a public street at night, was killed by being run