

osity of defendant—but it is too late now to make a new agreement.

I do not appreciate to the extent urged, the expert evidence of accountant offered to prove the necessity under the agreement in question, of setting aside some of the money to establish a capital account.

I find that there was and is a partnership between the plaintiff and defendant in reference to the land mentioned, and the dealings with it, and there will be a declaration to that effect.

The plaintiff will be entitled to one-fourth of the profits arising from the sale of such part or parts of said land as have been sold, or arising in any way whatever out of the dealings by the defendant with said lands since the making of the agreement, and further that the plaintiff is entitled to an undivided one-fourth of the unsold part of said land. As to most of the items it was stated at the time, that there would be no dispute—once the principle is determined as to the mode of taking the account—so there will not be a necessity for much, if any, oral evidence—and the reference may well be to the Local Master at Cornwall.

There was not in my opinion, any necessity for the second action. All the questions raised therein could well be disposed of in the first action.

As this second action has been consolidated with the first, and so cannot now be further proceeded with as an independent action, and as the defendant McDougall must bring forward whatever he has by way of account or set-off or counterclaim, I do not formally dismiss the second action, and if any formal disposition of it, other than above, be necessary—that can be made after the report, and on further directions. There will be judgment for the plaintiff directing a reference to the Local Master at Cornwall—to take the accounts and report. The judgment will be with costs to the plaintiff, Galbraith, against McDougall in both actions down to and including trial. Costs of reference and further directions reserved.

The appointment of a Receiver was asked for. That is not necessary at present. The plaintiff may at his own risk, as to costs, if he deems it necessary, apply later on. The accounts will be taken as partnership accounts, and not only the items brought forward by the plaintiff, Galbraith, but also those asked for by the defendant McDougall in his second action, and those brought forward and claimed by him in the reference.

Thirty days' stay.