

Sale of hotel business—Counterclaim for balance of purchase money—Deductions—Resale of assets—License—Trust—Goodwill—Chattel mortgage—Seizure—Sale—*Onus. Boucher v. Capital Brewing Co., 5 O. W. R. 270, 686, 6 O. W. R. 70. Digested fully under INTOXICATING LIQUOR.*

Setting out previous proceedings—*Amendment.*—The plaintiff in an action *en reddition de compte* will not be allowed to set out at length in his declaration the proceedings in a previous action between himself and the defendant, and such allegations will be struck out upon demurrer. However, as it may be of importance to him to allege such facts in a general way, to justify himself for not having begun his present action earlier, the Court will, *proprio motu*, permit him to amend his declaration by alleging the previous suit and the judgment therein. *Cheval v. Senécal, 4 Que. P. R. 241.*

Settlement—Agents—Salary—Errors—Master's report—Appeal. *Robinson v. Noron, 11 O. W. R. 549.*

Stated account—Agreement not to sue—Conditional statement—Further adjustment of accounts—Recovery on one item—Absence of alternative claim on items—Refusal to amend—Admission of parol evidence—Partnership—Profits.—On the dissolution of a partnership the partners signed a statement shewing an amount as due to the plaintiff as his share, and containing a declaration that "for the sake of peace and quiet and to avoid friction and bother," the plaintiff was willing to waive investigation of the firm's books and to agree that the balance as stated should be deemed to be the amount payable by the defendants to the plaintiff:—*Held*, that a promise to pay the amount of the balance so stated to be due should be implied from the admission of liability which the parties had so signed. In an action on the account stated, the defendants alleged that the plaintiff had agreed not to sue upon it, and that the document was merely intended to shew the amount which would be payable to the plaintiff at such time as collections might be made of outstanding debts due to the firm.—*Held*, that these contentions tended to contradict, vary, and annul the terms of the written instrument, and, consequently, did not constitute collateral agreements in respect of which parol evidence would be admissible. Judgment of the Courts below, 1 W. L. R. 97, 2 W. L. R. 379, reversed. *Jackson v. Drake (1906), 26 C. L. T. 315, 37 S. C. R. 315.*

Statute of Limitations—Agents of partners—Reference—Practice—Appeal to Supreme Court of Canada.—By agreement between them, the Hamilton Brass Manufacturing Co. were appointed agents of the Barr Cash and Package Carrier Co. for sale and lease of their carriers in Canada, at a price named for manufacture, net profits to be equally divided and quarterly returns to be furnished, either party having liberty to annul the contract for non-fulfilment of conditions. The agreement was in force for three years, when the Barr Co. sued for an account, alleging failure to make proper returns and payments.—*Held*, Girouard and

Davies, J.J., dissenting, that the accounts should be taken for the six years preceding the action only.—On a reference to the Master (3 O. W. R. 762), the taking of the accounts was brought down to a time at which the defendants contended that the contract was terminated by notice. The Court of Appeal ordered that they should be taken down to the date of the Master's report:—*Held*, that this was a matter of practice and procedure, as to which the Supreme Court would not entertain an appeal.—Judgment of the Court of Appeal in *Barr Cash and Package Carrier Co. v. Hamilton Brass Manufacturing Co., 6 O. W. R. 643, reversed. Hamilton Brass Manufacturing Co. v. Barr Cash & Package Carrier Co., 27 C. L. T. 224, 38 S. C. R. 216.*

Tenants in common—As long as the property is undivided, the remedy *en reddition de compte* in respect of revenues collected by the one, is not open in favour of the other; he has only an action *en compte et partage*. *Lepatt v. Ledoux (1900), Q. R. 35 S. C. 97.*

Time fixed by judgment for rendering—Damages in default—Death of defendant during time fixed—Revivor—Universal legatee—Payment of costs.—On 16th November, 1901, the judgment of the Court required the defendant to render to the plaintiff, within 30 days, an account of a quantity of wood which defendant had to dispose of for plaintiff, and, in case of default to render the account, to pay to plaintiff \$9,000, with interest, and costs in any case. On 30th November, 1901, the defendant died, leaving his wife his universal legatee. His decease was not entered on the roll. On 2nd December, 1901, the widow, as universal legatee, paid the costs of the action. On 13th January, 1902, the plaintiff served the judgment on the universal legatee, with a demand for payment of the \$9,000 within eight days, in default of which the judgment would be executed against her. On 21st January, 1902, she presented a petition alleging the death of her husband, her capacity of universal legatee, and asking that she should be added as a party to the suit in place of her husband and allowed to proceed in it. The plaintiff answered that the 30 days having expired the judgment had become final as to the \$9,000; that the petitioner had acquiesced in the judgment by paying the costs; and that there was no suit to which the petitioner could be made a party:—*Held*, that the plaintiff had not at the time of the defendant's death acquired a right to the \$9,000, since it was not due till after the expiry of 30 days, and then only in default of the account being produced within that time. 2. That the decease of the defendant stopped the running of the 30 days, for a dead man cannot render an account; and it was not a case within Arts. 268, 269, C. P., which say that suits are valid up to the day of service of notice of a party's death, for as against the defendant there had been no suit since his death. 3. That the universal legatee, in paying the costs of the action, acquiesced in the judgment, but did not acquiesce in the default to render an account and to pay the \$9,000. 4. That the universal legatee was in a position to take up the suit