

The Master had ordered the land to be sold before the taking of the accounts, and had given the parties leave to bid, giving the conduct of the sale to the Official Guardian.

The defendant contended that the accounts should first be taken, so that the amount of money he must put up, in the event of his purchasing, might be ascertained. If the land should sell for \$15,000, and the balance due the defendant before division should be \$7,000, he would have to put up only \$4,000—half the balance—and so could buy; but, if required to put up the whole price, he would be at a disadvantage, as his whole capital was in the business.

This contention should prevail, and the accounts between the parties should be taken, so that the interests of the respective parties might be known before the sale.

The appeal should be allowed. The defendant must undertake to expedite the accounting; there was no reason why it should not be completed in a few weeks.

The defendant was in possession, and there was no reason why he should not so remain pending the sale, but he must be charged with an occupation-rent, to be fixed by the Master.

Costs in the reference.

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THOMPSON V. THOMPSON—KELLY, J.—JAN. 24.

*Contract—Maintenance of Brother upon Homestead—Breach—Damages—Costs.*]—The plaintiff sued the defendant, his brother, for breach of an agreement to support and maintain the plaintiff upon the lands referred to in the agreement. The action was tried without a jury at Lindsay. KELLY, J., in a written judgment, finds that which the defendant contracted to do, after the death of the mother of the parties, was, to support and maintain the plaintiff in a fit and proper manner on the lands and premises referred to in the agreement; but there was no provision for an alternative in case of his neglect or refusal to do so. Any remedy to which the plaintiff was entitled was, therefore, in damages. There was no suggestion that, while the plaintiff remained at the defendant's house, he was not supported and maintained in a fit and proper manner, as concerned food, lodging, and clothing. But the defendant suggested the advisability of the plaintiff's procuring another boarding-house; and, in May, 1914, the plaintiff left the defendant's house, and had not since returned to it. In his statement of claim he offered to return, and renewed the