

Province of Manitoba.**COURT OF APPEAL.**

Full Court.]

KELLY v. KELLY.

[Feb. 13.

Partnership—Profits made by one partner in private speculations with partnership funds—Partnership Act, R.S.M. 1902, c. 129, ss. 22, 24, 32.

Appeal from judgment of MACDONALD, J., noted vol. 46, p. 36, allowed with costs, CAMERON, J.A., dissenting.

The defendant was the master-mind of the partnership, a firm of builders and contractors. He possessed great executive and organizing ability and contributed from time to time nearly all the capital with which in a period of 25 years large profits were made in carrying on that business. The plaintiffs were his brothers, men with little education or ability, competent only to act as foremen on the works. They always acted on the defendant's orders, and only drew money from the firm for their own use, when and as permitted by the defendant. He allowed Martin Kelly to share equally with him in the profits and Michael got one-fourth, but this was because they were his brothers, and from motives of generosity and ties of affection. There had never been any written articles of the partnership, which was one at will; but after its dissolution, the plaintiffs claimed to share in the profits made by the defendant in speculations, mostly in real estate with moneys drawn by him from the partnership funds before any ascertainment of the respective shares of the partners in, or any division of, the profits. The total amount so drawn out by the defendant was much less than he would have been entitled to had such division been made. Entries were made from time to time in the books of the firm by direction of the defendant shewing particulars of the transactions in question. The plaintiffs, though they were aware of some of the speculations, made no inquiries about them and appeared to have taken at the time no interest in them. The defendant never made the firm liable for postponed payments on his purchases, but gave his own covenants only; and, in cases where he made losses, they were never charged to the firm. Each of the plaintiffs had on several occasions, without the knowledge of the other, obtained the defendant's consent to draw out money for private speculations on his own