

The Legal News.

Vol. XIII. SEPTEMBER 20, 1890. No. 38.

SUPREME COURT OF CANADA.

OTTAWA, March 10, 1890.

Ontario.]

O'KEEFE V. CURRAN.

*Partnership—Terms of—Breach of conditions—
Expulsion of one partner—Notice—Waiver
—Good-will.*

Partnership articles for a firm of three persons, provided that if any partner was guilty of breaking certain conditions of the terms of partnership, the others could compel him to retire, by giving three months' notice of their intention so to do, and a partner so retiring should forfeit his claim to a share of the good-will of the business. One of the partners having broken one of such conditions, the others verbally notified him that he must leave the firm, and to avoid publicity he consented to an immediate dissolution, which was advertised as "a dissolution by mutual consent." After the dissolution, the retiring partner made an assignment of his good-will and interest in the business, and the assignee brought an action against the remaining partners for the value of the same.

Held, reversing the judgment of the court below, Fournier, J., dissenting, that the action of the defendants in advertising that the dissolution was "by mutual consent" did not preclude them from showing that it took place in consequence of the misconduct of the retiring partner; that such advertisement could not be invoked to support a claim which could have been made if the dissolution had really been by mutual arrangement; that the forfeiture of the good-will was caused by the improper conduct which led to the expulsion of the partner in fault, and not by the mode in which such expulsion was effected: and, therefore, the want of notice, required by the articles, of intention to expel, could not be relied on as taking the retirement out of that provision

of the articles by which the good-will was forfeited.

Appeal allowed with costs.

*Christopher Robinson, Q.C., and Moss, Q.C.,
for the appellants.*

McCarthy, Q.C., and Worrell for the respondents.

OTTAWA, March 10, 1890.

New Brunswick.]

O'BRIEN V. O'BRIEN.

*Partnership—Action by partners—Set off—Dis-
solution—Notice to defendant.*

An action was brought by three partners in the lumbering business for the amounts due from the defendants, for whom they had been getting out lumber during the years 1880, 1881, and 1882, as appeared by the accounts made out by defendant at the end of each year. To this action a set-off was pleaded, the greater part of which was for goods supplied after the year 1882, and the plaintiffs contended that such goods were supplied to one of them only; that the partnership had been previously dissolved, and the other plaintiffs had nothing to do with the dealings connected with the set-off. The issues involved in the action were, first, whether or not the partnership had been dissolved before the goods covered by the set-off were supplied by the defendant. Secondly, if it had been so dissolved, whether or not the defendant had notice of the dissolution.

On the trial, the plaintiffs made a *prima facie* case by proving the accounts of the defendant at the end of each year showing the several balances claimed in the action, and after evidence was taken on the set-off the plaintiffs caused the books of defendant to be produced to show that the goods supplied after 1882 were charged to P.B., whereas during the previous years the charges were to P. B. & Bros., the name of plaintiffs' firm. To rebut this, defendant was allowed, subject to objection, to show that entries had sometimes been made during the existence of the partnership, against P. B., and the judge in charging the jury told them that they could inspect the books and see how they were