

Whitney and the defendant, Clark J. Whitney in his lifetime was, and his estate is, a partner with the defendant in the operation and control of certain theatres and theatrical enterprises, and for an account.

The statement of claim sets out in full the agreement made on the 30th March, 1901, between the defendant and Clark J. Whitney. It states that Whitney was the sole lessee of the Grand Opera House, Hamilton, and the defendant was the sole lessee of the Grand Opera House, London, and of the Russell Theatre, Ottawa. It appears from the operative part of the agreement that the defendant may not have had a lease of the Russell Theatre. The defendant got by the agreement an undivided half interest in the Grand Opera House, Hamilton, together with its "profits and emoluments," and Whitney got an undivided half interest in the lease of the Grand Opera House, London, together with its "profits and emoluments." Each party was to assume, and apparently did assume, an equal one-half of the risk under each of these leases. The defendant further agreed to divide equally with Whitney the defendant's share of the profits of the Russell Theatre, Ottawa. The defendant agreed to use his best efforts to acquire the lease of the then contemplated new Opera House at Kingston, and, if successful, to give to Whitney a one-half interest in the same. The agreement was to extend until the expiration of the then existing leases of the mentioned theatres and any and all renewals thereof. The agreement further provided that it should be binding upon the heirs, executors, or assigns of the parties.

I am of opinion that the agreement contains what is equivalent to an express stipulation that the partnership should not be dissolved by the death of either, if such death should occur before the termination of the leases, but that it should continue until such expiration or sooner determination of the leases existing at the date of the agreement. The defendant got the profits from the property of the deceased Whitney, and must account for these.

The defendant in this action is in the position of one who has failed to deliver a statement of defence. He must be deemed to admit all the statements of fact set forth in the statement of claim. See Rule 354.

This is a matter only between the parties. No question arises as to the authority of one to bind the other—no question of the authority of an administrator to deal with the property.

The defendant was in possession of what was the property