

disposed of before that time, and the defendant was to be paid a certain sum each week, and also, at the end of the year, a percentage of the net profits of the business.

*Held*, that the sale of the business before the expiration of the year did not deprive the defendant of his right to the percentage of the net profits up to that time, but that he had no interest in the assets of the business and therefore no right to a percentage of the profits made by the plaintiff on the sale of the assets. Judgment of MEREDITH, J., reversed, MACLENNAN, J.A., dissenting.

*Chrysler*, K.C., for appellant. *Geo. F. Henderson*, for respondent.

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From Divisional Court.] MITCHELL v. SAYLOR.

[March 12.

*Mortgage—Rents and profits—Collateral indebtedness—Appropriation of receipts.*

A mortgagee in receipt of the rents and profits of the mortgaged premises from time to time sold goods to the mortgagor, and the latter upon a settlement of accounts assented to the receipts being applied first in payment of the account for goods sold.

*Held*, that an encumbrancer whose rights accrued after the settlement could not complain of this, and was not entitled to take the position that the rents and profits necessarily and irrevocably reduced the mortgage debt as they were received. Judgment of a Divisional Court affirmed.

*Aylesworth*, K.C., and *P. C. Macnee*, for appellant. *J. B. Clarke*, K.C., for respondent.

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From Divisional Court.] KENNEDY v. GAUDAUR.

[March 13.

*Partnership—Dissolution—Accounts.*

One of two partners at will in an hotel business agreed to sell his share to a third person and then went away to another province. The purchaser refused to complete because of alleged non-compliance with certain conditions, and the vendor brought this action claiming as against him specific performance, and, in the alternative, as against his partner who had continued to carry on the business, a dissolution of the partnership.

*Held*, upon the evidence, that the vendor was not entitled to specific performance; that his withdrawal was absolute and not conditional upon completion of the purchase; that the withdrawal had worked a dissolution; and that the partnership accounts should be taken as of the date of the withdrawal, and an opportunity given to the continuing partner of acquiring the interest of the vendor as at that date. Judgment of a Divisional Court reversed.

*N. W. Rowell*, for appellant. *S. H. Blake*, K.C., for respondent.