

the \$80,000 so obtained the sum found due from the plaintiff upon the general account.

The defendant appealed to the Court of Queen's Bench, who made their decree on the 23rd January, 1884. They reversed the decree below, directed that the shares held in trust should be divided between the plaintiff and defendant in the proportion of one part to the former and three to the latter, and dismissed the other conclusions of the plaintiff's action. The decree recites that the plaintiff is entitled to his share of the \$9,000 the price of the 80 shares sold by the defendant, and that such share with interest from the 30th of December, 1870, are more than compensated by the \$16,188 due upon the accounts.

From the judges' reasons it appears that they agreed in thinking that the plaintiff was entitled under the terms of the agreement of March, 1871, to 40 shares, which, however, putting the returned eight shares out of consideration, were reduced to 20 by MacEwan's claim, and that for these 20 the plaintiff, not being able to get them, was entitled to compensation. They also agreed that his compensation should not exceed the quarter of the \$9,000, but in their reasons for this opinion they differed. Chief Justice Dorion, looking upon the transaction of that day as a *partage* or a division between partners, thought that the shares must be valued as upon the 3rd March 1871, and were not shown to have been of any greater value than on the 30th December when the sale of the 80 shares took place. The other Judges, whose opinion is delivered by Mr. Justice Ramsay, agreed that the transaction of March 1871 was a *partage*, but they considered that the eviction of a partner from his share necessitated a new *partage*, so that the sole remaining property was to be re-divided according to the partnership deed.

From this decree of the Queen's Bench the plaintiff appeals, contending both that it ascribes to him too small a number of shares, and that it has put them at too low a value. He maintains that the smallest number of shares to which the agreement of March, 1871, entitles him is 40; that if that agreement is held inoperative he is entitled to half the firm's share of profits, and to be indemnified by the defendant against MacEwan's claim; and that the compensation for the shares

which he cannot get should be assessed by taking the value of the shares either on the 9th December 1871, the date of MacEwan's decree, or at the institution of MacEwan's suit, or at the institution of this suit.

It has been already stated that the shares were a partnership asset, and MacEwan's claim a partnership liability, which is inconsistent with the plaintiff's claim to half profits and indemnity. As to the other questions, their Lordships do not find it necessary to decide upon the arguments which were pressed very fully at the bar with reference to the local law by which the contract of March, 1871 ought to be construed, and with reference to the rules of law which regulate warranties upon sales and upon partitions of common property. They think this unnecessary, because the case is governed by a special contract made with knowledge of the causes from which the disputes have sprung, and containing within itself the grounds on which they must be settled.

Their Lordships view the agreement of March, 1871, as calculated to effect three main objects between the parties: first, to divide the 160 shares as a partnership asset would be divided according to the terms of the partnership deed; secondly, in effecting that division to attribute to the defendant's three fourths the whole of the 80 unsold shares; and thirdly, to stipulate that the loss arising from MacEwan's claim should fall on the partners rateably according to their shares. There is no reason to suppose that the defendant's sale of the 80 shares was in excess of his power as a partner, but the plaintiff, whether with reason or without, was contending that the shares were not a partnership asset, and in abandoning that claim he stipulated to have a full quarter of the shares as such. Thus, as between the partners, the plaintiff took his whole interest in shares, giving up his antecedent right to participate in the \$9,000; and the defendant took to the purchase effected by himself, giving up his antecedent right to have three fourths of the shares.

Then comes MacEwan's claim and sweeps away all the unsold shares. The defendant now cannot give the plaintiff any shares; but why? Not only on account of MacEwan's