

of, the monies should remain in the hands of the sequestrator appointed with the consent of the parties.

Appeal allowed with costs.

*Barnard, Q.C.*, for the appellant.

*Monk, Q.C.*, for respondent.

May 1, 1893.

FOGARTY V. FOGARTY.

Quebec.]

*Will—Construction of—Division of estate—Right to postpone.*

T. F. F., who, in partnership with his brother J. F., carried on business as manufacturers of boots and shoes in Montreal, by his last will left all his property and estate to be equally divided between his two brothers, M. W. F., the appellant, and J. F., the respondent. The will contained also the following provision :

But it is my express will and desire that nothing herein contained shall have the effect of disturbing the business now carried on by my said brother Jeremiah and myself, in co-partnership under the name and firm of Fogarty and Brother. Should a division be requested between the said Jeremiah Fogarty and Michael William Fogarty, should the latter not be a member of the firm for a period of five years, computed from the day of my death, in order that my brother, the said Jeremiah Fogarty, may have ample time to settle his business and make the division contemplated between them and the said Michael William Fogarty, and in the event of the death of either of them, then the whole to go to the survivor.

T. F. F. died on the 29th April, 1889.

On the 30th April, 1889, a statement of the affairs of the firm was made up by the book-keeper, and J. F. and M. W. F. having agreed upon such statement, the balance shown was equally divided between the parties, viz. : \$24,146.34 being carried to the credit of M. W. F. in trust, and \$24,146.34 being carried to J. F.'s general account in the books of the firm. At the foot of the statement a memorandum dated 12th June, 1889, was signed by both parties, declaring that the said amount had that day been distributed to them.

On the 6th March, 1890, M. W. F. brought an action against J. F., claiming that he was entitled to \$24,164.34 with interest from the date of the division and distribution, viz. : 30th April,