

accounted to him for the profits for which they are, in my opinion, bound to account under their contract with Mitchell, as varied, with his concurrence, by the reduction of his interest in the joint ventures from one-half to one-third. The onus is upon the plaintiffs of establishing that their assignors were relieved by Mitchell from any liability to fulfil their agreement with him, and that Mitchell accepted the plaintiffs as liable, instead of Rose Van Cutsem & Co., to account to him for the profits made by Rose Van Cutsem & Co., to one-third of which he was admittedly entitled under his contract with that firm. Notwithstanding Mitchell's want of candour and his frequent change of position, he has not, I think, so acted as to preclude himself from setting up against the plaintiffs the equities which he has, on firmly established principles, the right to set up against Rose Van Cutsem & Co. It would . . . be inequitable to allow the plaintiffs to succeed. The action should be dismissed with costs. If the plaintiffs desire, there may be a declaration that they, as assignees of Rose Van Cutsem & Co., are entitled to a two-thirds interest in the properties in question now held in the name of any of the defendants, and that the plaintiffs are entitled to a conveyance of such interest, upon Rose Van Cutsem & Co. or the plaintiffs paying to Mitchell any balance that may be due to him for moneys expended on their behalf, and one-third of the profits of the ventures in which that firm was concerned jointly with Mitchell. W. Nesbitt, K.C., and W. D. McPherson, K.C., for the plaintiffs. W. H. Blake, K.C., and R. C. H. Cassels, for the defendants.

AMERICAN STREET LAMP AND SUPPLY CO. v. ONTARIO PIPE LINE
Co.—FALCONBRIDGE, C.J.K.B.—MAY 31.

Damages—Contract — Report — Appeal.]—Appeal by the defendants from the report of the Local Master at Hamilton, and motion by the plaintiffs for judgment on the report. The only substantial question argued was as to the amount of damages awarded for the loss on 35 lamps from the 23rd December, 1907, to the 1st September, 1908. The Chief Justice said that the plaintiffs were under contract with the city; the possibility of gain or loss to them on the installation and maintenance of the 35 lamps seemed to be beside the question; they would have been better off if the defendants had carried out their contract to the