

had a lease of the Russell Theatre. The defendant got by the agreement an undivided one-half interest in the Opera House, Hamilton, together with its "profits and emoluments," and Whitney got an undivided one-half interest in the lease of the Opera House, London, together with its "profits and emoluments." Each party was to assume and apparently did assume an equal one-half of risk under each of these leases.

The defendant further agreed to equally divide with said 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 said Whitney one-half interest in 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 as if they had been specially mentioned.

I am of opinion that the agreement contains what is equivalent to an express stipulation that the partnership shall not be dissolved by the death of either, if such death should occur before the termination of the leases, but that it shall continue until such expiration or sooner determination of the leases existing at date of 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 authority of administrator to deal with the property. The defendant was in possession of what was the property of his partner and he is bound to account for it all on the basis of the agreement. It is simply a question of asking the defendant to fulfil his contract. The plaintiff is entitled as representing the deceased partner to ask for that.

There will be judgment for the plaintiff: (1) A declaration that under and by virtue of the said agreement, Clark, J. Whitney in his lifetime was and his estate is a partner with the defendant in the operation and management of the