

to sell under power of sale in the mortgage. R.'s solicitors on Feb. 13, 1900, wrote S. saying that no valid mortgage had ever been executed by R. and threatening proceeding to protect their client's interests, and on 2nd March they issued a writ on behalf of R. against S., claiming a declaration that the mortgage was null and void and an injunction restraining sale. On cross-examination on an affidavit made by R. in support of a motion for an interim injunction he said in substance that the reason he did not pay was because he could not and that he had never repudiated his contract, and in Oct., 1900, he discontinued his action. On Nov. 2, 1900, S. commenced his foreclosure action and in defence R. pleaded infancy:

*Held*, that the solicitor's letter and the writ in *Russel v. Saunders* did not constitute a repudiation as they were qualified by R.'s statement that he did not intend to repudiate.

Judgment of IRVING, J., dismissing the action, reversed.

*Duff*, K.C., for appellant. *Harold Robertson*, for respondent.

Full Court.]

CANE v. MACDONALD.

[Oct. 7, 1902.

*Dominion official—Salary—Receiver—Appointment—Partnership in—  
Right to share in salary ceases on dissolution.*

Appeal from judgment of MARTIN, J., refusing to appoint a receiver. While C. and M. were in partnership as architects, M. received an appointment from the Dominion Government as supervising architect and clerk of the works in connection with a Government building being erected in Nelson, and for a time M. paid the salary of the office into the partnership funds. M. afterwards notified C. that the partnership was at an end and thereafter refused to account for the salary. C. sued for a declaration that he was entitled to half the salary since the dissolution and asked that a receiver be appointed of it and also of the book debts of the firm, which he alleged M. had been collecting and not accounting for:

*Held*, that no receiver of the salary could be appointed; that although the amount of the book debts was small there should be a receiver in respect to them. Judgment varied by appointing receiver of partnership assets other than the salary. Costs of motion below and of appeal reserved for trial Judge.

Per HUNTER, C.J., at the trial: Even if it were agreed that the appointment should be for the benefit of the firm, all the partners would not have any right to share in the salary after the dissolution of the firm, unless there was a special agreement to that effect.

*Davis*, K.C., for appellant. *Duff*, K.C., for respondent.