

*Held*, affirming the judgment of the court below, that the deed created a real apparent servitude, which need not be registered, there being sufficient evidence of an open road having been used by F. and his predecessors in title as owners of lot No. 370.

*Held*, also, that though it would appear by the procedure in the case that McD. and C. had been irregularly condemned jointly to pay the amount of the judgment, yet as McD. had pleaded to the merits of the action and had taken up *fait et cause* for C. with his knowledge, and both courts had held them jointly liable, this court would not interfere in such a matter of practice and procedure.

Appeal dismissed with costs.

*Paradis and Belcourt*, for the appellants.

*Geoffrion, Q.C.*, for the respondent.

May 1, 1893.

#### BURY v. MURPHY.

Quebec.]

##### *Partnership monies—Sequestration of—Contre lettre.*

In November, 1886, G. B., by means of a *contre lettre*, became interested in certain real estate transactions in the city of Montreal, effected by one P. S. M. In December, 1886, G. B. brought an action against P. S. M. to have a sale made by the latter to one Barsalou declared fraudulent, and the new purchaser restrained from paying the balance due to the parties named in the deed of sale. A plea of compensation was filed and, pending the action, a sequestrator was appointed. In September, 1887, another action was instituted by G. B. against P. S. M., asking for an account of the different real estate transactions they had conformably to the terms of the *contre lettre*. The Superior Court dismissed the first action on the ground that G. B. had no right of action, but maintained the second action. The Court of Queen's Bench affirmed the judgment of the Superior Court, dismissing the first action, and P. S. M. acquiesced in the judgment of the Superior Court on the second action. On appeal to the Supreme Court of Canada it was

*Held*, reversing the judgment of the court below, that the plea of compensation was unfounded, the appellant having the right to put an end to the respondent's mandate by a direct action, and therefore until the second action of account was finally disposed