

or any of them for the malicious procuring of the breach by Jaffray of his contract with plaintiff; . . . that there is no evidence of conspiracy; that defendant Jaffray is not liable to account nor for damages for breach of the agreement. The evidence does not shew that plaintiff could with the aid of defendant Jaffray have brought about the formation of a purchasing company so that he could have made anything out of it. There is no equity to compel Jaffray to account for profits; see *Dean v. McDowell*, 8 Ch. D. 345. This is not at all like the case of one partner continuing to carry on the business in the same way after the expiration of the term without paying off the capital or settling with the other: *Parsons v. Hayward*, 4 De G. F. & J. 474. The case is not within the rule that information obtained in partnership business must not be used for any purpose that would compete with partnership business. Here there was no continuing business with which Jaffray as an individual was competing. Action dismissed with costs.

OSLER, J.A.

JULY 22ND, 1903.

TRIAL.

### GARDNER v. PERRY.

*Trusts and Trustees—Will—Action by New Trustees against Representatives of Former Trustee—Limitation of Actions—Trustee Act, sec. 32, sub-sec. 1 (b)—Bar—Counterclaim—Lease by Tenant for Life—Value of Straw and Manure on Demised Premises—Covenant—Emblements*

Action by the newly appointed trustees of the estate of Robert Gardner, deceased, against the executors of the will of Marietta Gardner, one of the executors named in the will of Robert Gardner, to compel defendants to make good losses occasioned, as alleged, by the negligence of Marietta Gardner in permitting one Thomas Holtby, a co-executor and trustee, to misappropriate large sums of money belonging to the estate of Robert Gardner, a wealthy farmer, who died in November, 1870, leaving a will, probate of which was granted on the 22nd December, 1870, to the executors and executrix named therein, viz., Thomas Holtby, Joseph Gardner (testator's brother), and Marietta Gardner (widow of testator). By the will the testator gave the income of his estate to the widow for her life, and, subject to certain legacies and bequests, devised the residue to be equally divided at her death between the children of his brothers and sisters. The executors and executrix were "to carry this my last will into effect," and power was conferred upon them "to dispose of the property if they think proper." Joseph Gardner, appar-