

Chan. Div.]

NOTES OF CASES.

[Chan. Div.]

partner who signed the agreement referred to. Both partners were anxious to sell, but the agreement in question, which referred only to a portion of the timber limits owned by the partnership, was entered into by the one partner only. It was, however, forthwith communicated to his co-partner who did not object to it or dissent from it, but, indeed, shortly afterwards furnished information to the purchaser which he was only entitled to ask for in pursuance of the agreement to sell.

*Held*, so far as authority to contract was concerned, the agreement to sell was, under the above circumstances, binding upon the partnership, though as a matter of precaution the joining in the conveyance by both the partners was desirable.

*Seemle*, the language of Lord Mansfield in *Fox v. Hanbury*, Cowp. 445 "each partner has a power singly to dispose of the whole of the partnership effects," is too broadly put in view of the present state of the law.

*Held*, also, though the written agreement sued on imported a down payment of the purchase money, yet extrinsic evidence was admissible to show that this was not the real agreement, and to prove that terms of credit were to be given as set forth in memoranda put in evidence signed by the firm name.

*Held*, also, it was competent for the managing partner and the purchaser to subsequently put an end to the terms of credit, and agree to a cash payment, thus reverting to the terms of payment contained in the contract set forth in the statement of claim.

*W. Cassels*, (with him *Brough*) for the plaintiff.

*Bethune*, Q.C., for defendant Macdougall.

*Moss*, Q.C., for defendant R. C. Smith.

*W. Cassels*, *Brough*, and *Plumb*, for defendants T. & P. C. Smith.

Boyd, C.]

[May 10.]

SANDERS V. MALSBERG.

*Conveyance from wife to husband—R. S. O. c. 109, sect. 2.*

Where by anti-nuptial settlement the intended husband and wife mutually agree that each of them shall separately hold, use, and enjoy the real and personal property which either may acquire during the marriage, whether by donation, succession, legacy, bequest, or by any title

or way whatever, as his or her own separate and respective property and estate in every respect, and each is to have the whole and sole absolute management, disposal and administration of his and her separate and respective property and estate, without the let or hindrance of the other, the effect is to vest the land then and subsequently held or acquired by the wife in her as proper separate estate to all intents and purposes.

Where then the wife in such case gives a mortgage of property so held by her, she retains power to deal with the equity of redemption and to alienate it as a *feme sole*. This power she has as of right by virtue of the equitable quality of the estate without the aid of the statutes relating to married women, and without the concurrence or joinder of her husband, and therefore there is no incongruity in the husband being the grantee of the wife; on which ground *Ogden v. McArthur*, 36 U. C. R. 246, is distinguishable.

Though the technical learning as to the legal unity of husband and wife, may require at law the intervention of trustees in their dealings *inter se*, yet the course of the Court of Equity is to give effect to such transaction by holding the one a trustee for the other: and there is no reason why the rule applied to the husband, should not apply conversely to the wife when dealing with her separate estate, so as to convert her into a trustee for her husband.

Where an agreement in writing has been executed, in the province of Quebec, it must be assumed in the absence of any evidence to the contrary, that its legal effect is such as would be given to it if entered into in this province.

*Seemle*, that R. S. O. c. 109, sect. 2, is retrospective so as to cast the *onus* of disproving the payment of the consideration on the party impeaching a conveyance as voluntary, even though the transaction took place prior to that enactment.

*G. Morphy*, for plaintiff.

*T. S. Plumb*, for defendant.

Boyd, C.]

[May 10.]

COURT V. WALSH.

*Statute of Limitations—Mortgage—Insolvency.*

Where the right of action for entry or foreclosure is taken away by virtue of the R. S. O. c.