

SIR BARNES PEACOCK :—

This is an appeal from a judgment of the Court of Queen's Bench for the Province of Quebec, appeal side, affirming a judgment of the Superior Court, by which the action of the plaintiffs, the now appellants, was dismissed with costs. There are, therefore, two concurrent judgments upon the question at issue between the parties.

The suit was brought in September, 1882, and the plaintiff's charge was : "That in and since the year 1869, the defendants Alfred Frederick Augustus Knight, George Josiah Cook, and John Larkin Cook, and the late Jas. William Cook, in his lifetime, the said Messrs. Cook trading under the name, style, and firm of Cook & Brothers, carried on business at Quebec as timber merchants, in co-partnership, under the name, style, and firm of A. F. A. Knight." The declaration also stated that James William Cook had died, and that certain persons were by his will appointed as his executrix and executors, and then it proceeded to state, "That the said executrix and executors took possession of the said estate under the said will, and after the death of the said James William Cook, the said business and co-partnership of the said Alfred Frederick Augustus Knight, George Josiah Cook, John Larkin Cook, and James William Cook, trading under the name and firm of A. F. A. Knight, was continued and carried on with the legal representatives of the said James William Cook until the year 1877." So that the charge was that the partnership between Knight, James William Cook, George Josiah Cook, and John Larkin Cook, was also continued with the addition of the executors of James William Cook in his place, and that they were also partners. Then it stated that "the said defendants Alfred Frederick Augustus Knight, George Josiah Cook, and John Larkin Cook were, together with the legal representatives of the late James William Cook," indebted to the plaintiffs in certain sums of money.

The ground upon which it was contended that George Josiah Cook, and John Larkin Cook had become liable as partners with Knight was that James William Cook, who was a partner with George Josiah Cook, and John Larkin Cook, in the year 1869, lent to

Knight a sum of \$100,000 for the term of five years, upon condition that Knight was to pay 6 per cent. interest for the money advanced, and also, that the firm of Cook and Brothers should receive one-half of the profits of Knight's business. The contract itself was not produced, but evidence was given by George Josiah Cook and other witnesses, from which it may be assumed for the present purpose that a contract was proved to have been entered into by James William Cook to the effect already stated.

Both the Courts dismissed the plaintiff's claim, upon the ground that, even assuming the alleged contract to have been executed by James William Cook—George Josiah Cook and John Larkin Cook were not bound by it, as one partner in a business has no authority from the other partners to enter into a partnership with other persons in another business. It was contended that George Josiah Cook had ratified the agreement, and that he, if not John Larkin Cook, had become liable as a partner. The Courts found that George Josiah Cook had not ratified the agreement, and that even if he had ratified it, it did not bind him to a partnership such as that which was alleged in the declaration, or such as would make George Josiah Cook liable as a partner with Knight and James William Cook. If George Josiah Cook ratified the agreement, it was only an agreement by which James William Cook, George Josiah Cook, and John Larkin Cook, were jointly to participate in the profits of Knight; they were not, by reason of that agreement, jointly liable, because one of them, John Larkin Cook, at all events, had never ratified or entered into the agreement, or ever authorized James William Cook to enter into it on his behalf.

It is contended now that even though John Larkin Cook was not liable, a decree may be given against George Josiah Cook, because he had ratified the agreement. One of the sections of the Civil Code of Lower Canada was cited, No. 1831, to show that participation in profits creates an obligation to participate in losses. The section is :—"Participation in the profits of a partnership carries with it an obligation to contribute to the losses. Any agreement by which one of