

On the 30th April, 1889, a statement of the affairs of the firm was made up by the bookkeeper, and J.F. and M.W.F., having agreed upon such statement, the balance shown was equally divided between the parties, viz., \$24,146.34 being carried to the credit of M.W.F. in trust, and \$24,146.34 being carried to J.F.'s general account in the books of the firm. At the foot of the statement a memo. dated 12th June, 1889, was signed by both parties, declaring that the said amount had that day been distributed to them.

On the 6th March, 1890, M.W.F. brought an action against J. F. claiming that he was entitled to \$24,146.34, with interest from the date of the division and distribution, viz., 30th April, 1889. J.F. pleaded that under the will he was entitled to postpone payment until five years from the testator's death, and that the action was premature.

Held, affirming the judgment of the court below, that J.F. was entitled under the will to five years to make the division contemplated and that he had not renounced such right by signing the statement showing the amount due on the 30th April, 1889.

Appeal dismissed with costs.

Carter, Q.C., and *Geoffrion*, Q.C., for the appellant.

Macmaster, Q.C., and *Greenshields*, Q.C., for respondent.

Quebec.]

[May 1.

BURY v. MURPHY.

Partnership moneys - 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 him to one Barsalou declared fraudulent, and the new purchaser restrained from paying the balance due to the parties named in the deed of sale. 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 Supreme Court dismissed the first action on the ground that G.B. had no right of action, but maintained the second action, and ordered an account to be taken. P.S.M. acquiesced in the judgment of the Superior Court on the second action, and G.B. appealed from the judgment, dismissing his first action, but the Court of Queen's Bench affirmed the judgment of the Superior Court. On a further 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 of, the moneys should remain in the hands of the sequestrator appointed with the consent of the parties.

Appeal allowed with costs.

Barnard, Q.C., for the appellant.

Monk, Q.C., for the respondent.