

retained to answer the maintenance of the child. As between husband and wife no costs. R. L. Brackin, for the plaintiff. J. H. Rodd, for the defendants the executors. A. R. Bartlet, for the defendant Charles A. Janisse.

MELDRUM V. MARTENS—MIDDLETON, J.—DEC. 28.

Contract—Brokers—Sale of Company-shares—Dispute as to Share of Profits—Ascertainment of Net Amount Realised from Sale—Alleged Sale by Defendant to Employee and Resale by him—Accounting on Basis of Price Realised upon Resale.—Action for a declaration of the plaintiff's right to a larger share of the profits on a sale of the stock of an industrial company than the defendant was willing to give him, and for an accounting. The action was tried without a jury at a Toronto sittings. MIDDLETON, J., in a written judgment, explained the transaction between the parties, both of whom were brokers. The defendant admitted the plaintiff's right to 25 per cent. of the net amount realised from the transaction; but the transaction was complicated by the defendant's dealings with an employee of his in Chicago; and the plaintiff contended that the net amount realised by the defendant was larger than the defendant stated. The learned Judge said that the defendant must account on the basis of the sale of the shares made to one Edwards at \$3.75 per share, and not on the basis of the sale alleged to have been made to the Chicago employee at \$3.33. The contract between the parties called upon the defendant to exert all his ability and to call into play all his resources, including the machinery of his Chicago office, and the defendant was to have as his remuneration the stipulated share of the profits. When the plaintiff entrusted the defendant with the right to act for him in the transaction, it was contemplated that the sale to an actual purchaser should be made by the defendant, and the defendant had no authority to hand the matter over to another. Such an arrangement as that said to exist between the defendant and his Chicago employee was a violation of the fundamental rule that no man may place himself in such a situation that his interest conflicts with his duty. An accounting must be directed upon the basis of the sale to Edwards and without any allowance for the remuneration of the Chicago employee. Proper expenses incurred in the Chicago office should be allowed. Unless the figures could be arranged, there must be a reference. G. H. Kilmer K.C., for the plaintiff. Frank McCarthy, for the defendant.