

But, inasmuch as deceased William Hill, by what I find to be his ineffectual attempt to make a testamentary gift, created the difficulties which the present litigation removes, it will not be unfair to deal with the costs of this action as if incurred in an unsuccessful attempt to establish a testamentary document as such under similar circumstances. The costs of both parties will, therefore, be paid out of the fund in question, those of defendant to be taxed between solicitor and client.

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ANGLIN, J.

DECEMBER 22ND, 1904.

TRIAL.

GIBSON v. LE TEMPS PUBLICATION CO.

*Partnership—Judgment against—Execution against Partners—Issue as to Fact of Partnership—Registered Declaration—Husband and Wife as Partners—Declaration of Dissolution by One Partner—Married Woman's Separate Estate.*

Plaintiff was a judgment creditor of Le Temps Publication Company, a registered partnership. An issue was directed to determine whether Flavien Moffet and Sara Moffet, his wife, were members of that partnership, and, as such, liable to have execution issued against them personally upon the judgment held by plaintiff against Le Temps Publication Co., and was tried without a jury at Ottawa.

J. Lorn McDougall, Ottawa, for plaintiff.

W. H. Barry, Ottawa, for Sara Moffet.

G. McLaurin, Ottawa, for Flavien Moffet.

ANGLIN, J.—By declaration dated 28th July, 1898, signed by Flavien and Sara Moffet, they declare themselves partners carrying on business as "La Compagnie Publication Le Temps," under an agreement made a few months earlier. The allegations made in this declaration, registered 3rd August, 1898, under the provisions of R. S. O. 1897 ch. 152, are, by sec. 5 of that statute, rendered incontrovertible as against "any party not being a member of the partnership by any person who has signed the same." Mr. Barry argued, upon the authority of numerous American decisions, that a married woman is incapable of becoming a partner of her husband. If, in view of the statutory provisions to which I